



Asia-Pacific
Economic Cooperation



Handbook on Prepackaged Goods

Legislation for the Implementation of
OIML Recommendation R87

August 2005

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Photos Taken at the Training Course in Kuala Lumpur, Malaysia in July 2004

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Foreword

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This booklet is one of outcomes of the training course with a title ‘Training Course on Developing Legislation for the Implementation of OIML Recommendation R87’ that was held in July 28-30th, 2004 in Kuala Lumpur, Malaysia organized by Asia-Pacific Legal Metrology Forum (APLMF) with a fund supported by the APEC-TILF (APEC Trade and Investment Liberalization) fund (CTI-18/2004T). The training course was also supported by the Ministry of Domestic Trade and Consumer Affairs and SIRIM Berhad in Malaysia, the New Zealand Agency for International Development, PTB (Physikalisch-Technische Bundesanstalt) in Germany and NMIJ (National Metrology Institute of Japan). On this occasion, I would like to extend my deepest thanks to all the participants and contributors from APEC member economies and from international and regional bodies especially to the secretariats of APEC and APLMF for their voluntary supports.

We keep making surveys among APEC members in relation with the seminar and the training program about Legal Metrology for finding needs and also for supplying resources. The survey shows that there is strong need for information concerning the prepackaged goods that is a new and future promising field of trade. In present market many goods are imported and sold in package, and those goods are prepackaged at producing countries. The big problem is the reliability of labeled information on such goods. Now the legislative rule for this labeling is just starting under operation. Also there are many demands for capacity building in the technical part of labeling procedures, concerning reliability of values listed on goods and consequently concerning the technical competences for legally controlled measurements such as weighing instruments. However the survey also shows that there are not enough resources for developing economies to have such capacity building programs. Such seminar/training courses could be effectively carried out under the arrangements of the

international organization APEC with the support of APLMF in accordance with the suitable priority based on the survey among APEC members.

Main target of this training course was to assist APEC and APLMF members develop legislation to implement the revised OIML recommendation R87 on prepackaged goods and thus meet the APEC and APLMF objective to harmonize metrology legislation on OIML international recommendations. The training course will be aimed at developing legislation to implement the average quantity system (AQS) for the determination of the quantity in pre-packaged goods. In this regard, New Zealand proposes to look at good regulatory practice, issues relating to harmonizing legislation on international standards, consultation procedures as well as the core issues to be considered when implementing the OIML R87.

In view of these situations, this first training course concerning prepackaged goods was organized by APLMF with a support from APEC in order to prepare a sure basis of metrological confidence in Legal Metrology. I would say certainly that this is a valuable starting step to fruitful activities in the Asia-Pacific region.

I am really pleased to have this outcome from the training course and again deeply appreciate invaluable voluntary efforts of the APEC and APLMF secretariats.

June 23, 2005



Dr. Akira Ooiwa
APLMF President

Summary Report on the APLMF Training Course on Developing Legislation for the Implementation of OIML Recommendation R87

APLMF training on developing legislation for the implementation of OIML (International Organization for Legal Metrology) Recommendation R87, Quantity of product in pre-packages, was held on the 28-30 July 2004 in Kuala Lumpur, Malaysia. It was hosted by the Ministry of Domestic Trade and Consumer Affairs and SIRIM Berhad.

Thirty delegates from 12 economies attended the training course held at the Regent Hotel, Kuala Lumpur. The participant economies included Cambodia, PR China, Hong Kong China, Indonesia, Lao PDR, Malaysia, Myanmar, Papua New Guinea, Peru, Singapore, Thailand and Vietnam.

The training was presented by Mr. Terry Collins, former Senior Advisor, Legal Metrology, Measurement and Product Safety Service, Ministry of Consumer Affairs and Ms. Roxanna Leathers, Solicitor, Legal Directorate, Ministry of Economic Development, New Zealand. They were greatly assisted by Dr. Tsuyoshi Matsumoto, Executive Secretary of the APLMF who provided support with the administration of the training course and the staffs from the Enforcement Division, Ministry of Domestic Trade and Consumer Affairs and SIRIM Berhad who ensured that the participants were well looked after. The training was also supported by the APEC TILF fund (CTI-18/2004T), the PTB (Physikalisch-Technische Bundesanstalt), the New Zealand Agency for International Development and NMIJ (National Metrology Institute of Japan).

The technical regulations that convey the parameters of measurement activities in trade play an important role in every economy. The confidence that goods traded are the correct weight or measure ensures an efficient marketplace and lowers transaction costs. As international trade continues to grow, it is getting more important that these regulations ensure goods can be traded freely without unnecessary obstacles or costs but with the confidence they are correct. The World Trade Organization seeks internationally, through its agreement on Technical Barriers to Trade, to *“ensure that technical regulations and standards, including requirements on packaging, marking and labeling and procedures for assessment of conformity with technical regulations and standards, do not create unnecessary obstacles to international trade”*. In addition, APEC has the long term goal of free and open trade for all member economies by 2020. To achieve these objectives, it is important to harmonize technical regulations between economies and ensure they are based on international standards.

The objective of this APLMF training seminar was to promote harmonized legislation controlling the requirements of prepackaged goods. This is achieved by the use and acceptance of OIML Recommendation R 87 and looking at OIML R79, “Labeling Requirements for Prepackaged Products” and the Codex Alimentarius, General Standard for the Labeling of Prepackaged Foods. The provisions contained in these are directly related requirements in regard to the identity of the product, name and address of the manufacturer, packer, or distributor and the net quantity of the product.

OIML Recommendation R87 contains the legal metrology requirements for prepackaged products labeled in predetermined constant nominal quantities of mass, volume, length, area and count. It provides sampling plans and procedures for legal metrology officials to verify the net quantity of product in prepackages. It also includes informative Annexes on an examination procedure outline, procedures for determining average tare weight, the drained quantity of products in liquid medium, and the actual quantity of frozen products. Also included is a mandatory Annex on misleading prepackages.

The seminar was aimed at officials who would be responsible for developing legislation to implement the average quantity system (AQS) for the determination of the quantity of product in pre-packaged goods. It was based on New Zealand’s experience developing AQS legislation and the policy framework used in New Zealand.

The first sessions involved setting the scene for the training over the 2.5 days and started by looking at recent regional co-operation initiatives such as the ASEAN Common Requirements for Prepackaged Goods and the proposed ASEAN/Australia/New Zealand Free Trade Agreement. The need to promote co-operation in legal metrology explicitly underpins these agreements in the standards and conformance area.

As an overview, the roles of APLMF, OIML, WTO and Codex Alimentarius were discussed as well as the linkages between these organizations. This led into an overview of the New Zealand legislative framework and introduced the elements of policy development and approval. The consultation and legislation process including drafting, select committee consideration and other steps to making legislation.

In regard to OIML Recommendation R87, the key considerations highlighted were;

- The need to define terminology within any legislation.
- The recommendation only covered inspection lots greater than 100 and the importance of framing legislation that treated inspection less than 100 in a similar manner to lots above 100.
- To create offences to sell or expose for sale short weight or measure goods regardless

whether they are prepackaged or not.

- Framing legislation to ensure prepackages meet the three rules of AQS.
- Defining inspection lots and where prepackages can be inspected so as to suit the local requirements of each economy.
- The “mandatory” prohibition on misleading prepackages and how this requirement is subjective and relates to the circumstances of each package. Therefore guidelines or tolerances must be further developed in operational policies.
- Framing tare and other test procedures in policy and operation documents instead of legislation.
- The provisions involving procedures to determine the drained quantity of product in a liquid medium.

Delegates at the training represented economies with varying development of legal metrology legislation. Therefore some time was spent addressing the issues of inspection powers, offences and penalties. It is essential for any inspection regime that authorities have the right to enter premises to conduct inspections. Also, because AQS is targeted at pre-retail inspections, offences should include possession for sale and exposing for sale. The defenses discussed included rules around desiccating goods, the liability of principles for the acts of employees and mutual recognition obligations. Penalties and the appropriateness of infringement offence notices, fines, forfeitures and restitution were explored as a means to ensure compliance and to be punitive against traders with fraudulent practices.

The training seminar concluded with each delegate giving a presentation on the current legislation and controls of prepackaged goods as well as the future steps to be taken in each economy to implement OIML R 87.

The second seminar on the implementation of OIML R87 is expected to be held in early 2006. This seminar will cover inspection procedures, equipment and methods to determine the net quantity of product in a prepackage.

In the latter part of this report, all of the detailed information prepared or obtained through the present training course is given, including final agenda, participants list, text books, reports from the trainees and evaluation feedbacks.

Mr. Terry Collins
Senior Advisor Legal Metrology
Ministry of Consumer Affairs
New Zealand
(Amended by APLMF secretariat)



Asia-Pacific
Economic Cooperation



APEC Training courses in Legal Metrology (CTI-18/2004T)

Training Course on Developing Legislation for the Implementation of OIML Recommendation R87

July 28-30, Kuala Lumpur, Malaysia

Final Agenda

Purpose:

To assist APEC (Asia-Pacific Economic Cooperation) and APLMF (Asia-Pacific Legal Metrology Forum) members develop legislation to implement the revised OIML recommendation R87 and thus meet the APEC and APLMF objective to harmonise metrology legislation on OIML international recommendations.

Overview:

The seminar will be aimed at developing legislation to implement the average quantity system (AQS) for the determination of the quantity in pre-packaged goods. In this regard, New Zealand proposes to look at good regulatory practice, issues relating to harmonising legislation on international standards, consultation procedures as well as the core issues to be considered when implementing R87.

Target audience:

We suggest that the ideal seminar participants include:

- Policy advisors
- Departmental solicitors responsible for drafting legislation
- Senior legal metrology officials

Presenters:

- Mr. Terry Collins, Senior Advisor Legal Metrology, Ministry of Consumer Affairs, New Zealand
- Ms. Roxanna Leathers, Solicitor, Legal Directorate, Ministry of Economic Development, New Zealand

Venue:

- The Hotel Regent Kuala Lumpur
160 Jalan Bukit Bintang, 55100 Kuala Lumpur, Malaysia
Tel: 603-2141800, Fax: 603-21421441

Agenda

Day 1: July 28 2004

09.00 Welcome and official opening:

(Mr. Chen Soo Fatt, SIRIM Berhad)

(Dr. Tsuyoshi Matsumoto, APLMF executive secretary)

09.30 Scene setting:

(Mr. Terry Collins)

10.00 Recent regional co-operation initiatives:

- APLMF working group on goods packed by measure
- ASEAN Common Requirements of Pre-packaged Goods

(Mr. Terry Collins)

10.30 Morning tea:

11.00 Discussion on international standards and conformance:

How APLMF fits into this, what commitments we have, why we should harmonise on international standards. Role of:

- APLMF
- OIML
- WTO
- Codex

(Mr. Terry Collins)

12. 00 Environment for Comparison: Overview of the New Zealand Framework.

Introduces the elements of policy, consultation, and legislation in New Zealand context and in perspective of other frameworks. This will set the outline for further discussion and allow delegates to begin the process of critical assessment of issues and relevance for their own environments.

(Ms. Roxanna Leathers)

12.30 Sound policy development: The basis of good regulatory outcomes.

A brief summary of policy in NZ with possible comparisons relevant to other delegate systems.

(Ms. Roxanna Leathers)

13.00 Lunch:

14.30 The Role of Consultation: The foundation of compliance.

- Who?
- When?
- Why?
- How often?
- How it contributes to the development of good regulation, with examples of how New Zealand consults with stakeholders.

(Ms. Roxanna Leathers)

15.00 Afternoon tea:

15.30 Turning Policy into Legislation: Overview of the New Zealand process.

- A discussion on the legislative objectives as the result of policy decisions.
- A summary of the legislative/regulatory process.
- Enforcement and compliance regimes.

(Ms. Roxanna Leathers)

16.30 Summary of day 1:

(Mr. Terry Collins, Ms. Roxanna Leathers)

17.00 Finish day 1:

Day 2: 29 July 2004

09.00 Discussion on day 1:

(Mr. Terry Collins, Ms. Roxanna Leathers)

09.30 Developing the Regulatory Environment: The New Zealand legislative process- a model for consideration.

- Authority to draft legislation.
- Primary legislation.
- Regulation.
- Powers to implement regulation.

(Ms. Roxanna Leathers)

10.30 Morning tea:

11.00 Efficient and effective Compliance: Sanctions, penalties, enforcement.

- Providing the appropriate enforcement mechanism and penalties.
- Creating an environment to promote compliance.

(Ms. Roxanna Leathers)

12.00 Overview of packaging requirements:

- R 79
- R 87
- Labelling and quantity marking issues

(Mr. Terry Collins)

13.00 Lunch:

14.00 Analysis of R87:

The average quantity system for the net contents of packages.

(Mr. Terry Collins)

15.00 Afternoon tea:

15.30 Technical principles:

- Short quantity offences:

- (1) Non pre-packed
 - (2) 'Catchweight' goods
 - (3) Set quantity goods and the average quantity system
 - Issues not covered in (3) and where they should be covered
- (Mr. Terry Collins)

Day 3: 30 July 2004

09.00 Summary of day 2 and discussion on contents:

(Mr. Terry Collins, Ms. Roxanna Leathers)

09.30 Offences and penalties:

- Offence to supply short weight, measure or number
- Desiccating goods
- 7 day rule
- Powers of inspection
- Liability of principle for the acts of agents
- Infringement Offences
- Penalties
- Forfeitures

(Mr. Terry Collins):

10.30 Morning tea:

11.00 Developing relevant defences:

- Statutory
- Mutual recognition issues

(Mr. Terry Collins)

11.30 Workshop: Each economy prepares a brief report outlining their current position and future steps in adopting R87.

- Mr. Giau Quy Tran (Vietnam)
- Mr. Somsak Khanthongkham (Thailand)
- Mr. S. Koban (Singapore)
- Mr. Leonardo De La Cruz (Peru)
- Mr John Goava (Papua New Guinea)
- Dr. Nwe Htoon (Myanmar)
- Mr. Peter Berinus (Malaysia)
- Mr Sisomphet Nhoibouakong (Lao DPR)
- Dr. Tsuyoshi Matsumoto (Japan)
- Mr. Ahmad Misbah (Indonesia)
- Dr. Chui Kuk-ying (Hong Kong China)
- Miss Meina Zhu (P.R. China)
- Mr. Hou Leng (Cambodia)

13.00 Closing ceremony:

- Give certificates to trainees (all trainees and Dr. Tsuyoshi Matsumoto)
- Closing addresses (Mr. Chen Soo Fatt and Dr. Tsuyoshi Matsumoto)

Participants List of the APLMF Training on Developing Legislation for the Implementation of OIML Recommendation R87

July 28-30, 2004, Kuala Lumpur, Malaysia

No.	Economy	Category	Title	First Name	Middle Name	Family Name	Organization
1	Cambodia	Trainee	Mr.	Setha		Chau	Department of Metrology (MIME)
2	Cambodia	Trainee	Mr.	Leng		Hou	Department of Metrology (MIME)
3	China, Hong Kong	Trainee	Dr.	Chui		Kuk-ying	Government Laboratory
4	China, PR	Trainee	Ms.	Xiaoyong		Ma	Beijing Institute of Measurement & Testing
5	China, PR	Trainee	Miss	Meina		Zhu	General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China
6	Indonesia	Trainee	Mr.	Eko	Agus	Irianto	Directorate of Metrology
7	Indonesia	Trainee	Mr.	Ahmad		Misbah	Directorate of Metrology
8	Japan	APLMF	Dr.	Tsuyoshi		Matsumoto	APLMF Executive Secretariat / NMIJ
9	Lao. PDR	Trainee	Mr	Sisomphet		Nhoibouakong	Science Technology and Environment Agency (STEA), Department of Intellectual Property, Standardization and Metrology (DISM)
10	Lao. PDR	Trainee	Mr	Bounthiam		Phimvongsa	Science Technology and Environment Agency (STEA), Department of Intellectual Property, Standardization and Metrology (DISM)
11	Malaysia	Trainee (local)	Mr.	Jimmy		Phung	Bistol-Myers Squibb (M) Sdn. Bhd.
12	Malaysia	Trainee (local)	Ms.	Caroline		Tan	Bistol-Myers Squibb (M) Sdn. Bhd.
13	Malaysia	Trainee (local)	Mrs.	Aniza bte		Abd. Ghani	Central Sugar Refinery Sdn. Bhd.
14	Malaysia	Trainee (local)	Mr.	Mohammad Saad	bin	Khairi	Central Sugar Refinery Sdn. Bhd.
15	Malaysia	Trainee (local)	Mr.	Peter	J.	Berinus Agang	Enforcement Division, Ministry of Domestic Trade and Consumer Affairs, Malaysia
16	Malaysia	Trainee (local)	Mr.	Ridzuan	bin	Mat Isa	Enforcement Division, Ministry of Domestic Trade and Consumer Affairs, Malaysia

17	Malaysia	Trainee (local)	Mrs.	Sapiah bte		Mohd Nor	Enforcement Division, Ministry of Domestic Trade and Consumer Affairs, Malaysia
18	Malaysia	Trainee (local)	Mrs.	Jamiah	bte	Saian	Enforcement Division, Ministry of Domestic Trade and Consumer Affairs, Malaysia
19	Malaysia	Trainee (local)	Mr.	Ang	Sia	Chua	Mettler-Toledo (M) Sdn. Bhd.
20	Malaysia	Trainee (local)	Mr.	Tony		Wong	Mettler-Toledo (M) Sdn. Bhd.
21	Malaysia	Trainee (local)	Mr.	Nigel		Wong	Mettler-Toledo (M) Sdn. Bhd.
22	Malaysia	Trainee (local)	Mr.	Ahmad	Zalane	Alias	National Metrology Laboratory, SIRIM Berhad
23	Malaysia	Host	Mr.	Chen	Soo	Fatt	National Metrology Laboratory, SIRIM Berhad
24	Malaysia	Trainee (local)	Ms.	Lee	Hooi	Lan	National Metrology Laboratory, SIRIM Berhad
25	Malaysia	Trainee (local)	Mr.	Muktar		Sawi	National Metrology Laboratory, SIRIM Berhad
26	Malaysia	Trainee (local)	Ms.	Jasmine		Lee	Nestle Sdn. Bhd.
27	Myanmar	Trainee	Dr.	Nwe	Nwe	Htoon	Dept of Standards, MSTRD
28	New Zealand	Trainer	Mr.	Terry	J.	Collins	Senior Advisor, Measurement and Product Safety Service, Ministry of Consumer Affairs
29	New Zealand	Trainer	Ms.	Roxanna	Marie	Leathers	Solicitor, Legal Directorate, Ministry of Economic Development (New Zealand)
30	Papua New Guinea	Trainee	Mr.	John		Goava	Independent Consumer & Competition Commission (ICCC)
31	Peru	Trainee	Mr.	Leonardo		De La Cruz Garcia	National Institute for the Defense of Competition and Intellectual Property (INDECOPI)
32	Singapore	Trainee	Mr.	S.		Koban	SPRING Singapore
33	Thailand	Trainee	Mr.	Somsak		Khanthong-kham	Central Bureau of Weights and Measures (CBWM)
34	Vietnam	Trainee	Mr.	Giau	Quy	Tran	Directorate for Standards and Quality

Scene Setting

- **Why are we here?**
- **To learn about how to develop legislation for the implementation of the Average Quantity System for determining the quantity of product in prepackages.**
- **This legislation is based on harmonising each countries legislation with the requirements of OIML Recommendation 87 Quantity of product on prepackages.**

Scene Setting

- Agenda
- Today;
 - Recent regional co-operation initiatives.
 - Discussion on international standards and conformance.
 - Environment for comparison:
 - An overview of the New Zealand framework.
 - Sound policy development:
 - The basis of good regulatory outcomes.

Scene Setting

- Agenda
- Today;
 - The role of consultation
 - The foundation of compliance.
 - Turning policy into legislation
 - Overview of the New Zealand process
 - Summary of day 1.

Scene Setting

- Agenda
- Tomorrow;
 - Developing the regulatory environment
 - The New Zealand legislative process.
 - Efficient and effective compliance
 - Sanctions, penalties and enforcement
 - Overview of packaging requirements.

Scene Setting

- Agenda
- Tomorrow;
 - Analysis of R 87
 - Technical principles
 - catch weight
 - non prepacked
 - outside the coverage of R 87

Scene Setting

- Agenda
- Friday;
 - Offences and penalties
 - Developing relevant defences
 - Workshop
 - Each participant will prepare a brief outline on the progress each country is making to implement AQS (R87) and the expected timetable.

Scene Setting

- Possible workshop examples;
 - problems and demands concerning prepackaged goods
 - current position and steps adopting R87
 - measurement standards and their relationship with prepackaging instrumentation
 - other topics?

Scene Setting

- This seminar will be interactive between the trainers and the trainees with discussion on each subject.
- Questions at any time are encouraged.
- We need your questions to help us focus on the points that will help you.

Regional Co-Operation Initiatives

- Through the ASEAN Free Trade Area (AFTA) - Closer Economic Relations (CER) Closer Economic Partnership (CEP), Australia and New Zealand have been working with ASEAN members to strengthen regional trade links and pursue common trade goals

Regional Co-Operation Initiatives

- During the ASEAN Economic Ministers Retreat, held in Singapore on 21 April 2004, ASEAN Economic Ministers expressed support for consideration of an ASEAN/Australia/New Zealand Free Trade Area

MEMORANDUM OF UNDERSTANDING

- **CONCERNING COOPERATION ON STANDARDS AND CONFORMANCE**
Between
ASEAN and CER

MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION ON STANDARDS AND CONFORMANCE

- The principal objectives of this Memorandum are:
- a) to encourage collaboration in programs that may, from time to time, be arranged between the Bodies that support the development of standards and conformance systems that facilitate trade; and
- b) to encourage and promote co-operation on standards and conformance including:
 - (I) measurement standards;
 - (II) legal metrology;
 - (III) documentary standards development;
 - (IV) accreditation of testing and inspection bodies;
 - (V) accreditation of certification bodies; and
 - (VI) any other areas that may be mutually determined by the Parties

APLMF WORKING GROUP ON GOODS PACKED BY MEASURE

- **OBJECTIVE**
- To harmonize the requirements for prepacked articles in the Asia-Pacific economies with a view to removing technical barriers to trade.

Working Group on Goods Packed by Measure Work Plan for 2004

- Action
- In conjunction with the WG on Training, develop a proposal for training on development of model legislation for implementing R87.

ASEAN INITIATIVES

- ASEAN Common Requirements of Prepackaged Goods.
- Final Draft for voting on at the ASEAN working group meetings that will be held 31 July and 2 August.

International Organisations

- APLMF Asia Pacific Metrology Forum
- OIML Organisation of International Legal Metrology
- WTO World Trade Organisation
- Codex Codex Alimentarius Commission

APLMF

- The Asia-Pacific Legal Metrology Forum (APLMF) is a grouping of legal metrology authorities in the Asia-Pacific Economic Co-operation (APEC) economies and other economies on the Pacific Rim, whose objective is the development of legal metrology and the promotion of free and open trade in the region through the **harmonisation and removal of technical or administrative barriers** to trade in the field of legal metrology

APLMF Objectives

- To identify and promote the removal of technical or administrative barriers to trade in the field of legal metrology.
- To develop and maintain mutual confidence in measurement (metrological control) among legal metrology authorities in the Asia-Pacific region
- To promote mutual recognition arrangements among Members and with other regional groups and individual economies

OIML

- The International Organisation of Legal Metrology (OIML) is an intergovernmental treaty organisation whose membership include, countries which participate actively in technical activities, and corresponding, countries which join the OIML as observers

OIML

- One of its objectives is to promote the global harmonisation of legal metrology procedures.
- The OIML develops model regulations, **International Recommendations**, which provide Members with an internationally agreed-upon basis for the establishment of national legislation

World Trade Organisation WTO

- The World Trade Organisation (WTO) is the only global international organisation dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business

World Trade Organisation WTO

- The WTO's overriding objective is to help trade flow smoothly, freely, fairly and predictably.
- It has nearly 150 members and account for 97% of world trade and around thirty others are negotiating membership.

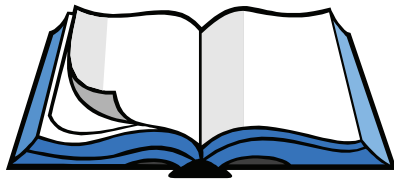
Codex Alimentarius Commission

- The Codex Alimentarius Commission was created in 1963 by FAO and WHO to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme.
- FAO: Food and Agriculture Organisation of the United Nations.
- WHO: World Health Organisation

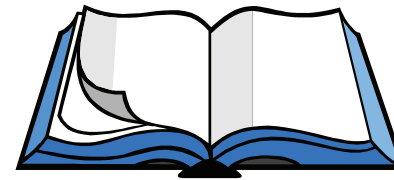
Codex Alimentarius Commission

- The main purposes of this Programme are protecting health of the consumers and ensuring fair trade practices in the food trade, and promoting co-ordination of all food standards work undertaken by international governmental and non-governmental organisations.

Session 4: Overview



The Environment for Comparison: Overview of the New Zealand Framework



Key Government Goals for New Zealand

- Strengthen National Identity
- Grow an Inclusive, Innovative Economy
- Maintain Trust and Provide Strong Social Services
- Improve Skills
- Reduce Inequalities
- Protect and Enhance the Environment

Ministry of Economic Development Strategic Priorities

- Facilitate the alignment of economic activities
- Improve international connections
- Stimulate enhanced entrepreneurial and innovative capability
- Improve the regulatory environment for business
- Improve quality and reliability of key infrastructure

From Beginning to End

- Stage 1: Policy Process
 - Decision to pursue a policy proposal requiring legislation
 - Policy development
 - Cabinet approval of policy
- Stage 2: Consultation Process
- Stage 3: Legislation Process
 - Drafting
 - Cabinet approval of Bill
 - Reference to government caucus(es) and other parties
 - Introduction, first reading and referral to select committee
 - Select committee consideration
 - Other parliamentary steps until making.

The Policy Process

The Ministry of Economic Development has a Policy Framework for delivering “best practice policy advice”:

- Project planning
- Policy development
- Peer review and quality assurance

The Consultation Process

Consultation is the key to acceptance and compliance and is required for:

- Key policy issues
- Matters of general importance
- Population groups when affected
- Specialised areas of relevance across government
- Specific policy/operational issues

The Legislative Process

It is the legislative process that implements the policy and intent:

- Bills, Acts, Regulations
- The sequence for passing Bills
- Scope of Bills
- Omnibus Bills and Business Committee
- Other categories of Bills
- Parliamentary Questions
- Regulations Review Committee

Overview Appendix 1

Key Government Goals to Guide the Public Sector in Achieving Sustainable Development*

- **Strengthen National Identity and Uphold the Principles of the Treaty of Waitangi**

Celebrate our identity in the world as people who support and defend freedom and fairness, who enjoy arts, music, movement and sport, and who value our diverse cultural heritage; and resolve at all times to endeavour to uphold the principles of the Treaty of Waitangi.

- **Grow an Inclusive, Innovative Economy for the Benefit of All**

Develop an economy that adapts to change, provides opportunities and increases employment, and while reducing inequalities, increases incomes for all New Zealanders. Focus on the Growth and Innovation Framework to improve productivity and sustainable economic growth.

- **Maintain Trust in Government and Provide Strong Social Services**

Maintain trust in government by working in partnerships with communities, providing strong social services for all, building safe communities and promoting community development, keeping faith with the electorate, working constructively in Parliament and promoting a strong and effective public service.

- **Improve New Zealanders' Skills**

Foster education and training to enhance and improve the nation's skills so that all New Zealanders have the best possible future in a changing world. Build on the strengthened industry training and tertiary sectors to ensure that New Zealanders are among the best educated and most skilled people in the world.

- **Reduce Inequalities in Health, Education, Employment and Housing**

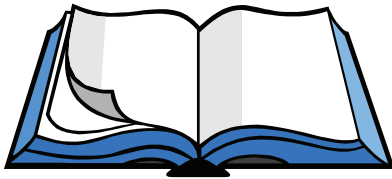
Reduce the inequalities that currently divide our society and offer a good future for all by better co-ordination of strategies across sectors and by supporting and strengthening the capacity of Māori and Pacific Island communities. Ensure that all groups in society are able to participate fully and to enjoy the benefits of improved production.

- **Protect and Enhance the Environment**

Treasure and nurture our environment with protection for eco-systems so that New Zealand maintains a clean, green environment and builds on our reputation as a world leader in environmental issues. Focus on biodiversity and biosecurity strategies.

*Found online at http://www.dpmc.govt.nz/dpmc/publications/key_goals.html

Session 5: Policy Development



Sound Policy Development: The Basis of Good Regulatory Outcomes

The Ministry of Economic Policy Framework

MED has developed a framework with three things that are important for “best practice policy advice”:

- Project planning;
- Policy development;
- Peer review and quality assurance.

Stage 1: Project planning and management

The project planning stage requires:

- Project specification;
- Assessment of required resources, key tasks, critical milestones and dates, and risk identification;
- Monitoring and reporting plans;
- Planning for consultation.

Stage 2: Policy Development

- Understand the Strategic Context;
- Identify the policy issue;
- Understand the factors causing the issue;
- Identify policy objectives and criteria for resolving;
- Identify options for addressing the issue;
- Assess each option;
- Identify fiscal implications;
- Develop monitoring and evaluation of policy;
- Develop recommendations, and deliver the advice.

Understanding the Strategic Context

Identify the governments desired goals, policies, and commitments. Identify related areas of policy, consider the budget strategy, and legislative priorities.

Clearly Identify the Policy Issue

- Define the issue;
- Clarify any assumptions or value judgements relevant at this stage;
- Identify any useful 'tools' such as theoretical; frameworks, important stakeholder consultation;
- Identify related policy or other factors impacting on the issue;
- Consider:
 - Government goals, objectives, related/conflicting policy or outcomes;
 - The context;
 - Compliance costs;
 - Key variables;
 - Relevant information and data;
 - Cross-border issues.

Understand the Factors Causing the Issue

- Understand and explain factors using 'tools' such as modeling or other methods tailored to the issue;
- Consider:
 - Modelling techniques;
 - Information required to determine cause and effect;
 - Identify and state assumptions;
 - Peer review;
 - Complexity.

Identify Policy Objectives and Criteria for Resolving the Issue

- Develop a clear, to the point statement of the objective to be achieved;
- Develop a list of criteria to identify whether the objective will be achieved;
- Objectives and criteria should be:
 - **Specific**;
 - **Measurable**;
 - **Achievable**;
 - **Results focused**, and
 - **Time-limited**.

Identify Options for Addressing the Issue

- Clearly identify and describe the range of options that might address the issue:
 - Key features;
 - How it will address issue;
 - How it will achieve objective and criteria;
 - How it will assist in government outcomes, goals.
- Consider:
 - Who is best to resolve the issue?
 - Other government policy that contribute to or may help solve the problem;
 - Is there a role for government in resolving?

Assess Each Option

- Assess all options objectively and fairly on same criteria with the same weightings;
- Discard any option that does not address the issue and meet the objectives. All options capable of meeting the objectives should be subjected to a cost benefit analysis;
- A cost benefit analysis should identify the option with the greatest overall benefits against desired outcomes, objectives.
- Identify and weakness or strengths of the analysis;
- Consider:
 - Affordability and cost effectiveness;
 - Legislative or legal risks;
 - Practicality and ability to be implemented.

Identify any Fiscal Implications

- Estimate costs of implementing each option;
- If financial implications exist, analyse these including:
 - Identifying effects of option on government operating budget, cash flow, balance sheet;
 - Recommending baseline adjustments;
 - Describing effect on outputs of funding within existing baseline;
 - Implications on priorities for spending;
 - Specific measure to address shortfalls in third party funding.

Develop Proposals for Monitoring and Evaluation

Policy proposals should include:

- A clear statement of policy objective to be operationalised for the purpose of monitoring and evaluation (M&E);
- A clear description of how the proposed policy, intended results advance the outcomes, goals, objectives;
- A description of the M&E methodology:
 - Criteria for evaluation;
 - Who the audience for evaluation will be;
 - Regular M&E reporting requirements.

Develop Recommendations

Recommendations should:

- Clearly articulate your view;
- Identify and explain substantive differences of view between government agencies, external stakeholders;
- 'Stand alone' with clearly stated, explicit, and unambiguous decisions providing clear authority;
- Clearly identify the objectives against which the policy will be evaluated;
- Identify what was agreed to those responsible for implementation;
- Clearly articulate where they were based on fact or judgement;
- Provide enough information so good decisions can be made;
- Use decisive terminology: invite, direct, agree, approve, etc.

Stage 3: Peer Review and Quality Assurance

At the planning stage of the policy development, consider:

- Accountabilities for Quality Assurance (QA);
- Peer review;
- Managerial review;
- Formal sign out;
- Project review.

Deliver Advice

Indicators that the policy advice meets requirements;

- Advice is clear, logical, and in plain language;
- The issue is clearly stated, options to address it are explained logically in relation to objectives and goals;
- The costs, benefits, winners, and losers are explained for each option with assumptions identified;
- The policy advisor's view is clearly identified;
- There is a clear, concise executive summary;
- Recommendations flow logically from the analysis and make sense when read alone.
- The delivery meets criteria for length, structure, substance.

Effective legislation begins with the policy development process

Guidelines:

- Time and care in the development of policy will result in legislation that is coherent, consistent and workable and a more effective and efficient drafting process
- Involve departmental lawyers, PCO and other legal advisers early in the process
- Set a realistic timetable
- Consider transitional matters at an early stage

Policy Appendices

Sound Policy Development Appendix 1: Checklist for Cross-Border Issues

At an early stage in policy development, it is important to identify the nature and significance of cross-border issues. Any policy and implementing legislation should take into account the followings factors:

- Dealings across borders;
- Persons outside NZ whose conduct affects persons in NZ;
- Persons in NZ whose conduct affects persons overseas;
- Civil proceeding in NZ involving overseas parties;
- Civil proceedings in NZ concerning dealings governed by foreign law;
- Civil proceedings overseas raising issues of NZ law;
- Information or evidence overseas required for the purpose of detection and investigation of breaches, and enforcement action;
- Whether NZ determinations or NZ law obligations will be recognised or enforced overseas, and vice versa;
- Whether cooperation with other States is needed to give effect to the policy;
- Whether there are applicable treaties, or other international obligations.

SOUND POLICY DEVELOPMENT APPENDIX 2: MINISTRY OF ECONOMIC DEVELOPMENT POLICY FRAMEWORK

Project Planning

Project Specification

Identify the client and describe their requirements, including obligations with other political parties.

Identify the project objective.

Identify key project tasks.

Identify the relationship of the project to other processes of policy development.

Identify what work has already been undertaken.

Identify project risks or opportunities, and strategies for their management.

Project Resources

Identify the skills and competencies necessary to complete the project tasks.

Assign responsibilities.

Develop a critical path and identify project milestones and dates.

Schedule when each of the project resources or personnel will be required.

Allow sufficient time for Government processes.

Project Monitoring and Reporting

Clarify project management, monitoring and reporting requirements.

Clarify how decisions to adjust the project plan will be made if circumstances change.

Consider what processes of peer review and quality assurance are necessary and who will be responsible for each.

Consider whether or not a full review of the project will be required on its completion.

Consultation

Identify key stakeholders

Consult with other parts of the Ministry on options that have implications for them.

Consult with other government agencies – Treasury on policies with economic or fiscal implications. SSC on policies with machinery of government implications, TPK on issues with Maori implications, Women's Affairs, Environment, MFAT etc as appropriate.

Consult with external stakeholders such as Maori (iwi, hapu, whanau as appropriate) business and consumer interests.

Consider the need for consultation at each stage of the policy project.

Identify any risks of consultation and plan strategies for their management.

Assign responsibilities for the management of consultation.

Policy Development

Understand the Strategic Context

Identify all relevant Government goals, policies and commitments

Define the Issue

Produce a precise statement of the issue and how it relates to the Government's desired goals.

Describe the factors contributing to it and logically explain why.

Support your analysis by reference to empirical and practical evidence.

Identify an Objective and Criteria

State the objective that would be achieved by addressing the issue and identify criteria for assessing this.

Identify Options to address the issue

Identify all viable options for addressing the issue. Logically explain how each will achieve the policy objective.

Assess Options

Assess the costs, benefits, winners and losers and the risks associated with each obligations. Rank each option according to its relative strengths and weaknesses.

Support your conclusions with practical evidence. Identify fiscal, legal, machinery of government, Treaty or other implementation issues.

Complete a Regulatory Impact Statement.

Scope Monitoring and Evaluation Requirements

Monitoring & evaluation should be included in all major policies.

Craft Recommendation

Recommendations should be clear, flow from the logic of the analysis, and be action focussed.

Prepare the Advice for Delivery

Presentation should be clear, logical and in plain language. Any assumptions or value judgments should be clear. Any Cabinet paper should comply with Cabinet Office guidelines.

Quality Assurance

Assign Responsibilities for Peer Review and QA

Review the Adequacy of the Project Plan

Is there provision for peer review?
Has the need for consultation and for any necessary government processes been considered and planned for?

Review the Adequacy of the Issue Analysis

Is the issue adequately defined?
Is there a logical explanation of the factors causing the issue?
Is the objective for addressing the issue clearly stated?

Seek Managerial Review Prior to Developing Options

Review the Adequacy of Option Development and Assessment

Have viable options for addressing the issue been identified?

Is the assessment of costs, benefits, winners and losers adequate? Is it informed by a theoretical and practical understanding of the issue? Have any legal, fiscal, machinery of government, Treaty of Waitangi, communications or other implementation issues been adequately considered?

Has a proposal to evaluate the preferred option (if implemented) been prepared?

Seek managerial review before final sign out of advice.

Review the Presentation of Advice

Is the advice clear, logical, readable and grammatically correct?

Does it meet any Cabinet Office requirements?

Are the recommendations clear, logical and action focussed?

Complete and File a QA Checklist

It is the policy management's accountability to ensure the overall quality of the policy advice and that all of the Ministry's requirements and standards for policy advice are met.

Post Project Review

What can be learnt from this project to inform future projects.

Note: The policy manager is responsible for all stages including planning, policy development and quality assurance.

Sound Policy Development: Appendix 3 Quality Assurance Checklist for Policy Advice

	Comments/ References	Yes/No /NA
Project Planning and Management		
<p><i>Project Planning</i></p> <p>Was a project plan prepared and did it specify and allow for:</p> <ul style="list-style-type: none"> • The client and the client's requirements? • The resources needed – staff members, skill mix etc? • Project milestones, deliverables and critical dates? • Consultation requirements? • Project reporting and quality assurance requirements? • Project risks and strategies for their management? • Any necessary government processes? 		
<p><i>Consultation</i></p> <p>Was consideration given to the management of consultation with government and non-government stakeholders including:</p> <ul style="list-style-type: none"> • Sections of the Ministry with an interest in the issue? • Government agencies with an interest in the issue? • Outside stakeholders with an interest in the issue, including business, consumer and Maori stakeholders? 		
Policy Analysis and Development		
<p><i>Scoping and definition of the policy issue</i></p> <p>Is the policy issue adequately identified and described with reference to:</p> <ul style="list-style-type: none"> • The Government's desired goals, policies and commitments? • Related areas of government policy? • Relevant stakeholders, institutions, laws and regulations? • Relevant theory, research and evaluation findings? 		
<p><i>Identification of a policy objective and criteria</i></p> <p>Is a policy objective and criteria for addressing the issue identified?</p>		
<p><i>Identification of options</i></p> <p>Are one or more viable options for addressing the issue identified?</p> <p>Is the logic of how each option would address the issue and meet the policy objective clearly explained?</p> <p>Is each option described in sufficient detail that it is clear what would be implemented?</p>		
<p><i>Assessment of options</i></p> <p>Is each option assessed against the identified policy objective and criteria?</p> <p>Have the overall costs, benefits, winners and losers of each option been assessed?</p> <p>Have the practicalities and risks of implementation been considered including any fiscal, legislative, legal, machinery of</p>		

<p>government or communications issues?</p> <p>Have Treaty of Waitangi and issues of relevance to Maori been considered as well as the need for Government to inform itself of any such issues?</p> <p>Did the analysis draw on practical experience and empirical evidence from New Zealand and overseas?</p>		
<p><i>Evaluation of preferred option</i></p> <p>Have proposals for monitoring and evaluation of the preferred option, if implemented, been prepared?</p>		
<p><i>Presentation of policy advice</i></p> <p>Is the policy advice presented clearly and logically?</p> <p>Does the advice follow the logic and findings of the analysis?</p> <p>Is there a concise statement of the issue and its relevance to the Government's goals and objectives?</p> <p>Is there a clear description of one or more viable options?</p> <p>Are the costs, benefits, winners and losers of each option identified?</p> <p>Have the practicalities of implementation been considered including any fiscal, legal, legislative, machinery of government or communications issues?</p> <p>Is there an account of the consultation undertaken, and consideration of the views of government and non-government stakeholders?</p> <p>Is the Ministry's advice clear and do the recommendations stand-alone?</p> <p>Does any Cabinet paper conform to Cabinet Office Guidelines?</p>		
Peer Review and Quality Assurance		
<p><i>Peer Review</i></p> <p>Was any peer review undertaken of the analysis (other than by MPG or other government agencies)?</p> <p>Did MPG review the policy analysis at the completion of the scoping and issue identification stage and prior to its finalisation?</p> <p>Have any draft reports or Cabinet papers been reviewed for readability, spelling, grammar and compliance with Cabinet Office guidelines?</p>		
<p><i>Quality assurance and sign out</i></p> <p>Are you satisfied that the policy advice meets the Ministry of Economic Development's requirements and standards for policy advice as set out in its "Policy Framework" and "Quality Standards"?</p> <p>Have all documents including the project plan, any research or analysis, any written consultation findings, and copies of any reports or policy advice been filed?</p>		

Sound Policy Development Appendix 4:

Policy Advice: Statement of Best Practice

31 May 2000

The document below was prepared as part of a Review of the Processes and Standards associated with Policy Advice in the Ministry of Economic Development, and is incorporated as Annex 1 in the report of that review, dated April 2000. It has been adopted as an on-going reference point for policy advice best practice, is the basis of the Ministry's Policy Framework, and is available on the Ministry's Intranet site.

- [Ingredients of Best Practice Policy Advice](#)
- [Stage 1. Project Planning and Management](#)
 - [1.1 Project Specification](#)
 - [1.2 Project Resources, Key Tasks, Critical Dates and Milestones and Project Risks](#)
 - [1.3 Project Monitoring and Reporting](#)
 - [1.4 Planning for Consultation](#)
- [Stage 2. Policy Development](#)
 - [2.1 Understand the Strategic Context](#)
 - [2.2 Identify the Policy Issue](#)
 - [2.3 Understand the Factors That Are Causing the Issue](#)
 - [2.4 Identify a Policy Objective and Criteria For Resolving the Issue](#)
 - [2.5 Identify Options For Addressing the Issue](#)
 - [2.6 Assess Each Option](#)
 - [2.7 Identify Any Fiscal Implications](#)
 - [2.8 Develop Proposals for Monitoring and Evaluating the Policy.](#)
 - [2.9 Craft Recommendations](#)
 - [2.10 Present and Deliver Your Advice](#)
- [Stage 3. Peer Review and Quality Assurance](#)
 - [3.1 Accountabilities for Quality Assurance](#)
 - [3.2 Peer Review](#)
 - [3.3 MPG Review](#)
 - [3.4 Sign-Out](#)
 - [3.5 Project Review](#)
- [Stage 4. Documentation and Filing](#)

Ingredients of Best Practice Policy Advice

1. Although each piece of policy analysis is unique, there are a number of generic steps and disciplines that ought to be applied to the production of each. These steps are documented in the "best practice" policy literature, various departmental policy guidelines¹, and Cabinet Office guidelines.

2. The ingredients of best practice policy advice are discussed in the sections that follow under the headings:

- Project planning, including the need to identify and manage consultative processes;
- Policy development, including the initial scoping and definition of the policy issue, the identification of policy objectives and criteria for identifying viable policy options, the assessment of policy options and the production and delivery of policy advice; and
- Peer review and quality assurance.

3. Although the amount of time and attention devoted to each step will vary from project to project, each should be carefully considered prior to commencement of the policy process or analysis. Where there is a history of policy analysis and advice on a particular issue, it is possible that some of the steps may already have been completed. For instance, it is possible that previous work might have gone into defining or researching the policy issue. For this reason, it is important to look back at the beginning of the policy project so as not to waste time and resources "reinventing the wheel".

4. A summary of these stages and how they relate is presented diagrammatically as the [Project Framework](#). See also the proposed [Quality Assurance Checklist](#). The set of standards for assessing the quality of policy advice is attached as [Policy Standards](#). These are derived from the indicators presented at the conclusions of each of the following sections.

¹Such as those of the Ministry of Economic Development, the Department of Labour's Labour Market Policy Group, the Ministry of Social Policy and the Ministry of Education.

Stage 1. Project Planning and Management

- [1.1 Project Specification](#)
- [1.2 Project Resources, Key Tasks, Critical Dates and Milestones and Project Risks](#)
- [1.3 Project Monitoring and Reporting](#)
- [1.4 Planning for Consultation](#)
 - [Consultation with Other Sections of the Ministry](#)
 - [Consultation with Other Government Agencies](#)
 - [Consultation with Non-Government Stakeholders](#)

5. Planning is critical to the production of quality policy advice. Policy analysis and advice is often characterised by risk and uncertainty. For instance, the changing requirements of Ministers or the uncertainty of knowing how external stakeholders might react to a particular policy proposal.

6. Planning is important to the identification and management of risks that might otherwise negatively impact on the quality of the policy product.

7. Problems typically arise in policy processes when planning is absent. For instance, processes of consultation may be ineffective because they do not occur early enough in the policy process or because they are rushed or circumvented because of lack of time. The Government's own consultation requirements may not have been allowed for.

8. Project planning is essential to identifying project resources, ensuring that policy personnel understand their respective roles, setting tasks, priorities, and timeframes, ensuring that information and other project requirements are identified, and that project risks are identified and managed.

9. Planning is essential for larger projects that involve significant resource allocation, and processes of internal and external co-ordination and consultation. With smaller or less important projects a formal project plan may not be required. However, it is still important that the analyst and their

manager think through the various stages and requirements of the project in advance of committing resources to it.

10. Rather than being a "strait jacket", a good project plan is a management tool. It allows the progress of the project to be monitored against the Ministry's requirements and those of its Ministerial clients. If circumstances change, it might be necessary to modify and renegotiate elements of the plan.

11. The need for and detail of each project plan will vary depending on:

- the significance and scope of the project;
- the work required; and
- the experience or inexperience of those involved.

12. When developing a project plan consider:

1.1 Project Specification

- Who is the client? What do they require? Why do they require it? When do they require it by? How important is it to them?
- Project objectives. What must the project achieve to be a success?
- What does the project entail? What are the tasks that must be undertaken to achieve the project objectives e.g. problem identification, information gathering, research etc?
- How big is it?
- What relationship does the project have to other processes of policy advice or implementation, both within and outside the Ministry?
- What work has already been done on the issue?
- What requirement does the Government have to consult other parties or stakeholders? How long will these processes take?

1.2 Project Resources, Key Tasks, Critical Dates and Milestones and Project Risks

- Assigning responsibilities for tasks. What skills and competencies are required to achieve each task and who will be responsible for what tasks? Who has overall responsibility? Who will sign off on the project plan and subsequent policy advice?
- Critical relationships. Will other officials or non-government personnel be involved? Why will they be involved? At what stages of the project will they be involved?
- Developing a critical path. What are the key project milestones? Are some project tasks dependent on the completion of others? In what sequence must tasks be completed? When will consultation occur?
- Risks and opportunities. What are the risks to the successful completion of the project such as poor information or its unavailability? What strategies are necessary to manage or mitigate any risks? Are there potential opportunities to facilitate the successful completion of the project such as utilising the experience of a visiting academic or industry leader? What strategies are necessary to harness these opportunities? When will Ministers become involved and any necessary Government processes occur?
- Resource scheduling. Which members of the project team and other resources such as research findings or consultation findings will be required and when?

1.3 Project Monitoring and Reporting

- How regularly will progress against the project plan be monitored (daily, weekly or monthly)? Who will monitor progress? Who will progress be reported to? What form will the report take (oral or written)?
- Who will advise on any necessary modifications to the project plan? Who will approve any necessary modifications to the project plan? Who needs to be informed of any modifications?
- What processes of quality assurance and peer review are necessary? At what stages in the project will quality assurance take place? Who will have responsibility for quality assurance? Who will be accountable for the successful completion of the project?

- Is it necessary to review the project on completion? Would review of the project provide information or leanings useful to future projects? Who will have responsibility for reviewing the project? Who will the review findings be made available to (branch personnel, other policy managers, MPG)?

Indicators of a planned approach to policy development

Policy staff are familiar with and regularly practice project planning techniques and disciplines.

Formal project plans exist for larger policy projects (at least those that appear in the Ministry's Purchase Agreement).

1.4 Planning for Consultation

13. Consultation is an important element of policy analysis and advice. The need for it should be considered and planned for at the initial [project planning](#) stage. In presenting your policy advice, you should demonstrate the extent to which consultation has occurred, and the extent to which the information gained from consultation has been reflected in the Ministry's policy advice.

14. Consultation implies a process by which substantive input is sought from other agencies, the public, or from particular stakeholders, either to define the dimensions of an issue, to develop options to address an issue or to assess and comment on proposed policy options.

The requirements for consultation have been legally interpreted and ruled upon². Consultation should be undertaken in good faith. The parties being consulted should understand the purpose of the consultation, be provided with relevant information, and know what is required of them. Decisions must not be taken until their views have been carefully considered.

15. Effective consultation can improve the quality of policy advice and subsequent decisions through a better understanding of the issue, the range of options for addressing it and the practical implications of each option. Effective consultation may also improve buy in to policy decisions through generating a wider understanding of the issue and the need for action to address it. It can also ease the implementation of decisions, especially if there is already an understanding amongst stakeholders of what has to be done, why and by when.

16. Consultation is not without cost or risk. These risks need to be identified, understood, planned for and managed. They include the direct financial costs of consultation, the resources and time needed to manage consultation, the potential for stakeholder capture, the risk of only hearing from a biased sample of stakeholders and the potential political risks if control is lost over the process of consultation.

17. To realise the benefits of consultation, it is important that it is planned for as an integral part of the policy process. This should occur at the initial [project planning](#) stage. As a general rule, consultation within the Ministry and with other relevant government departments and agencies should begin early in the policy development process.

18. Before consulting, be very clear on your purpose. For instance, is the purpose to better understand and define the issue, or is it to seek substantive comment on a set of potential policy options. Make sure that the persons being consulted understand the purpose of the consultation and what is required of them, by when and how their input will be used. Failure to align expectations of consultations may damage stakeholder relationships or result in political risks to the policy process such as a disgruntled industry association complaining to the Minister or media.

19. Where consultation is a legislative requirement, understand and ensure that all legal requirements are met. Failure to do so may result in review by the Parliamentary Regulation Review Committee or litigation.

20. While consultation can result in a common understanding of an issue and consensus on how it ought to be resolved, this will not always be the case. Different parties may place different emphasis on aspects of the problem, or emphasise different values in how they believe it ought to be addressed. Sometimes consensus will not be possible, and attempts to achieve it will result in "lowest common denominator" decisions. Having considered all submissions, it remains the Ministry's duty to give its free and frank advice to Ministers. While consultation will help inform the issue and options to address it, it is not a substitute for analysis or judgement.

Where there is a difference of opinion between departments or agencies, attempts should be made to resolve these differences before a policy paper is presented to Ministers. However where the

disagreement is over basic "principles" or "values" Ministerial judgement may be necessary. Such differences should be clearly signalled to Ministers.

21. In planning and developing policy advice consider:

Consultation with Other Sections of the Ministry

- Which branches or sections of the Ministry need to be consulted and at what stages in the policy process:
 - a. where an issue involves the core business of a particular branch it must be consulted;
 - b. where an issue or option has financial or budgetary implications the Finance Section must be consulted;
 - c. where an issue or option has potential legal, regulatory or legislative implications the Ministry's Legal Advisors must be consulted.

Consultation with Other Government Agencies

- Which Government agencies need to be consulted and at what stages in the policy process? Familiarise yourself with Cabinet Office requirements for consultation. For example, you are required to consult with:
 - a. Te Puni Kokiri on issues with implications for Maori;
 - b. the Ministry of Pacific Island Affairs on issues with implications for Pacific peoples,
 - c. the Ministry of Women's Affairs on issues with implications for women;
 - d. the Ministry of Youth Affairs on issues with implications for young people;
 - e. the Treasury if the Cabinet paper has any economic, fiscal or revenue implications;
 - f. the State Services Commission if the Cabinet paper has any implications for appointment and remuneration of CEOs, accountability issues affecting CEOs and departments, industrial relations in the state sector, and government management issues in the state sector including machinery of government, change management and human resource policies.

Consultation with Non-Government Stakeholders

- Which non-government agencies, stakeholders or sections of the public need to be consulted, when and how. Consider the need for consultation with business, consumer and Maori (including iwi, hapu, whanau, as appropriate) stakeholders.

When consulting you need to consider:

- what you want out of the consultative process. Are you seeking information to help define the problem, or are you seeking stakeholder views on proposed solutions;
- what information external parties require in order to effectively participate in the consultative process;
- how you will manage the expectations of those parties you intend to consult with;
- how you will manage any potential risks of the consultative process;
- how you will consider and analyse submissions; and
- how much time you need to allow yourself for consultation.

Indicators that the requirement for consultation has been considered

Government and non-government entities with an interest in the issue, including Maori, business and consumer stakeholders, have been identified.

Consultation is planned for and managed from the outset of the policy process.

²Wellington International Airport Ltd v Air New Zealand Ltd [1993] 1 NZCR (CA).

Stage 2. Policy Development

- [2.1 Understand the Strategic Context](#)
- [2.2 Identify the Policy Issue](#)

- [2.3 Understand the Factors That Are Causing the Issue](#)
- [2.4 Identify a Policy Objective and Criteria For Resolving the Issue](#)
- [2.5 Identify Options For Addressing the Issue](#)
- [2.6 Assess Each Option](#)
 - [Its Affordability and Cost Effectiveness](#)
 - [Any Legislative or Legal Risks](#)
 - [Its Practicality and Ability to Be Implemented](#)
- [2.7 Identify Any Fiscal Implications](#)
- [2.8 Develop Proposals for Monitoring and Evaluating the Policy.](#)
- [2.9 Craft Recommendations](#)
 - [Writing Financial Recommendations for Cabinet Papers](#)
- [2.10 Present and Deliver Your Advice](#)

2.1 Understand the Strategic Context

22. Identify the Government's desired goals, policies and commitments. Identify related areas of government policy. Also consider the Government's Budget Strategy and its Legislative priorities.

Indicator that the strategic context has been considered

There is reference to the Government's goals, relevant policies and commitments.
--

2.2 Identify the Policy Issue

23. Clearly define the issue to which a solution is sought.

24. How the issue is defined may influence how it is addressed. For instance, does the issue arise as a result of insufficient competition, failure of regulation, or failure to adequately enforce regulations? Be open to approaching the issue from a variety of analytical perspectives and consider how each stacks up against the best available information.

25. Make clear any assumptions or value judgements that are applied at this stage.

26. Theoretical frameworks are useful tools for identifying issues and developing hypotheses to explain their causes. However, initial conclusions and hypotheses should be tested against the best available information, such as that gained from the Ministry's research or program evaluation findings. Consultation with key stakeholders may also help inform issue identification. For instance, small businesses will have views on the efficiency and compliance costs of particular regulatory requirements.

27. In defining the issue, search for "leverage points" upon which possible solutions can act. For instance, tax policy settings might be identified as a factor that influences firm investment decisions in research and development.

28. Clear issue identification requires consideration of:

- Relevant government goals and policies. Understand the Government's desired outcomes, and frame the issue with reference to these;
- Related policies or goals. Are there other government policies with conflicting objectives that might be contributing to the issue?
- The context. Who are the key actors or stakeholders? What influence does each have over the achievement of desired outcomes? What are the incentives on different parties to either address or mitigate the issue?
- Who faces the cost of the issue and who would benefit from its resolution? Who has an interest in resolving the issue?
- Relevant theoretical frameworks. These can be used to understand and describe the issue, but should be tested against empirical observations and other relevant information;
- Key analytical variables. What are the factors that cause or contribute to the issue? Be careful not to overly complicate the problem definition with extraneous variables. Use empirical data or other information to identify and focus on key variables; and
- Relevant information and data. Use information to test the robustness of your hypotheses. Be prepared to revisit your understanding of the issue if data or information does not support it.

Indicator of adequate issue identification

There is a clear and precise statement of the issue or problem and how it relates to the Government's desired outcomes, goals or objectives and why it necessitates ministerial action.

2.3 Understand the Factors That Are Causing the Issue

29. Understand and logically explain the factors that are causing the issue. Modelling is a useful tool for doing this. It will force you to clarify your hypotheses of cause and effect, and to explain and test the importance of different variables. It will also force you to be very clear and transparent in your assumptions.

30. Explanatory models need not be complex or time consuming. The method chosen should be tailored to reflect the nature, scale and scope of the issue. In some cases, a simple diagram that demonstrates lines of cause and effect will be sufficient. In others, an econometric model might be necessary to identify and test the relevance of different explanatory variables.

31. Consider each of the following:

- Use of a modelling technique that suits the nature/scale of the problem;
- Data and information requirements necessary to establish or test causal relationships. Ascertain their availability;
- Causal relationships. Hypothesise, test and understand the relationships between key variables and the issue. Identify and dispose of extraneous variables or relationships. Don't clutter a model or explanation with non-important variables or information;
- Your assumptions. Make these transparent;
- Peer review. Use peer review to test the validity of your explanation. The process chosen should be appropriate to the nature and scale of the issue and the type of model being used; and
- Complexity. Is the issue solvable? It may be that it needs to be broken into smaller component parts to be systematically solved. Some issues may not be worth solving if the cost of solving them outweighs the potential benefits.

Indicators that the causes of the issue are understood

The factors or variables that are causing or contributing to the issue are clearly identified.

2.4 Identify a Policy Objective and Criteria For Resolving the Issue

32. Develop a clear and succinct statement of the objective that will be achieved as a result of addressing the issue. Also develop a list of criteria that will enable you to identify whether or not potential policy options will achieve the objective. Consider:

- what is sought from Government and Ministry of Economic Development perspectives; and
- what criteria would need to be met in order to know that the objective had been achieved?

33. The objective and related criteria, to the extent possible, should be specific, measurable, achievable, results focused and time-limited (SMART). They should provide a practical basis for identifying a range of viable options, and for evaluating the success of an option if implemented.

Indicators that a policy objective has been identified

A policy objective is clearly stated.

2.5 Identify Options For Addressing the Issue

34. Clearly identify and describe the range of options that might address the issue and achieve the policy objective.

35. Describe each option in plain language so that it is clear what would be implemented. When developing options consider:

- who is best placed to resolve the issue. For instance, consider who bears any costs or benefits associated with the issue, and how the environment could be changed to alter incentives and behaviours;
- whether other Government policies are contributing to or have potential to help resolve the issue; and

- whether or not there is a role for Government in solving the problem. If so, identify the levers available to Government. For example, consider whether or not regulation would be an efficient and effective means of aligning incentives or responsibilities for the resolution of the issue. Also consider whether or not there is a role for Government in either purchasing or directly providing services that might resolve the issue.

36. Learn from past experience and overseas attempts to address similar issues. Consider analogous issues in other areas of policy that might provide useful insights. Do not repeat the mistakes of other jurisdictions or areas of policy, but learn from their successes.

37. Consider [consultation](#) (Section [1.4](#)) at this stage of the policy process. Industry, consumer or other stakeholders might have views or insights into practical options for addressing the issue. The issue may have implications for Maori, women, regional communities or other sectors of society. Its solution might lie another area of policy such as tax or research and science policy.

38. For each option clearly and logically describe:

- its key features;
- how it will address the issue;
- how it will achieve the related policy objective and criteria; and
- how it will help advance the Government's desired outcomes, goals or objectives.

Indicators that viable options have been developed

One or more viable options for addressing the policy issue are clearly stated.

The logic of how each option will address the policy issue is logically explained in plain language and with reference to the Government's desired outcomes, goals and objectives.

2.6 Assess Each Option

39. Subject all options to the same set of assessment criteria in an objective and even-handed manner. If some criteria have more weight or importance than others, say so and explain why.

40. Discard any option that fails to address the issue and meet the required objective. For those that are capable of addressing the issue and meeting the policy objective, subject each to a cost benefit analysis.

41. The aim of a cost benefit analysis is to find the option that will result in the greatest overall benefits (relative to the Government's desired outcomes, goals and objectives) net of any costs associated with its implementation and operation. If weight is given to some costs or benefits over others, say so and explain why.

42. Be up-front about the strengths or weakness of your analysis. For instance, if the empirical information used to assess costs and benefits is limited, say so.

43. For each option consider:

Its Affordability and Cost Effectiveness

- Assess the overall costs and benefits of the option (consider the need for a more formal cost benefit analysis that requires an assessment of net benefits over time given a particular discount rate);
- Who will bear the costs and benefits (clearly identify winners and losers)?
- The likely impacts for particular stakeholders and sectors of society such as small and larger businesses, regional economies, the unemployed, Maori and Pacific Island peoples;
- Any compliance cost implications, including for firms (big and small), individuals, local government or consumers. Central government compliance costs should be identified separately as part of your assessment of any fiscal implications. All Cabinet papers are required to contain a "Regulatory Impact Statement", even if the statement is that there are no compliance cost implications associated with the proposal; and
- Any fiscal costs or benefits for the current fiscal year and out-years (refer section [2.7](#))

Any Legislative or Legal Risks

- Any legal costs or risks such as the possibility of litigation if there is some doubt as to the compatibility of the option with relevant legislation (such as a challenge from a business

that considers itself to be disadvantaged by the option). You will need to consult with the Ministry's Legal Advisors on this;

- Compatibility with other relevant statutes or regulations? The Cabinet Office Manual requires you at least to consider any Privacy Act or Bill of Rights Act implications of any option that you propose. Again, you will need to consult with the Ministry's Legal Advisors on this;
- Are there any legislative implications? Will the proposal require legislative amendment? Is legislation necessary? Can this proposal be implemented through regulation?
- Any Treaty of Waitangi implications?
- Any implications for international treaties, agreements or negotiations?

Its Practicality and Ability to Be Implemented

- Is the option administratively feasible? Will it require piloting? Is it possible to effectively monitor and evaluate the option? and
- Are there any machinery of government implications? Are there any implications for the allocation of functions to and between departments?
- Are there any implications for the amalgamation or abolition of existing departments or agencies? You may need to consult with the State Services Commission on this.

Indicators that the costs and benefits of options have been assessed

Each option has been objectively assessed against the policy objective and related criteria.

For each option that meets the policy objective, there is a clear assessment of its relative costs and benefits, including any implications for Maori and the Treaty of Waitangi.

Key tradeoffs between options are clearly identified.

Any assumptions or value judgments regarding the relative importance of key tradeoffs or assessment criteria are clearly identified and brought to the attention of decision-makers.

2.7 Identify Any Fiscal Implications

44. Estimate the fiscal costs of implementing each viable option including any on-going costs and any potential sources of funding as clearly and in as much detail as possible.

45. All policy papers with financial implications must provide a financial analysis of the proposal. Treasury must be consulted on the fiscal analysis. Treasury analysts will want to consider factors such as the reasonableness of the purchase price for outputs, the assumptions underlying any forecasts, whether implementation issues have been identified and considered, any financial risks or potential savings arising from the proposal, and the source of funding for the proposal. This should include:

- an identification of the implications of the proposal for the Crown's operating statement, cash flow and balance sheet for the current fiscal year and out-years;
- recommendations for any adjustments that should be made to existing baselines in each of these years to be consistent with the Supplementary Estimates criteria;
- a description of the outputs (departmental or non-departmental) which would be reduced or ceased if the Ministry was required to fund the proposal from within currently approved baseline levels;
- the implications of any reprioritisation for the operation of the Vote(s) concerned; and
- where a proposal involves reducing third party revenue, identification of what specific measures will be taken to address that shortfall, for example corresponding reductions in expenditure.

Indicators that fiscal implications have been assessed

Any fiscal implications of the proposal are clearly identified for the current fiscal year and out-years.

2.8 Develop Proposals for Monitoring and Evaluating the Policy.

46. Monitoring is a continuous or periodic process of collecting information on how a policy is working and what its effects are. That may mean collecting information directly related to the

policy or information on those parts of the economy where the policy is operating. Evaluation uses that information and research findings to assess overall impact relative to intentions and to improve the quality of decisions by informing current and future advice with lessons learned from previous experience³. All policy advice implies a view on causality, and it is legitimate that this be made explicit and tested. Evaluation can be used to help assess whether a particular policy achieves its intended results, and whether or not these contribute to the intended outcome, goal or objective.

47. In order to carry out an effective evaluation, it is imperative that policy makers clearly describe the intended policy, its intended results and objective, and the criteria by which the policy's success would be measured.

48. Policy proposals should include:

- a clear statement of the policy objective which can be operationalised for the purpose of monitoring and evaluation;
- a clear and logical description of the relationship between the proposed policy, the intended results of the policy and how these might advance desired outcomes, goals or objectives; and
- a description of the proposed evaluation methodology, including;
 - a. criteria for evaluating the achievement of the intended policy objective;
 - b. who the audience for the evaluation will be; and
 - c. any regular monitoring or evaluation reports.

Indicators that the need for evaluation has been considered

There is a clear and logical description of how the proposed policy option will contribute to the policy objective and how this will contribute to the advancement of the Government's desired goals.

2.9 Craft Recommendations

49. Clear recommendations are critical to the delivery of policy advice. Recommendations should be crafted so that the Ministry's advice on a preferred course of action is clear.

50. A good set of recommendations should "stand-alone" from the main paper or report. That is, Ministers should be able to reach a decision based on a paper's recommendations, even when the paper itself has not been read in its entirety. This is particularly important, as Cabinet Committees sometimes refer only the recommendations of a paper to Cabinet for final confirmation.

51. The [Cabinet Office Manual](#) provides detailed rules and guidelines for the drafting of recommendations. Failure to follow these rules and guidelines may result in the paper not being accepted by Cabinet Office or its recommendations being redrafted by Cabinet Office.

52. When crafting recommendations consider:

- Whether the Ministry's view has been clearly articulated;
- Whether substantive differences of view between Government agencies have been clearly identified;
- Whether the views of external agencies/interest groups are clearly articulated and any differences explained;
- Whether the recommendations "stand-alone" and are written clearly so that when they appear as decisions without the supporting documentation, are explicit, unambiguous and provide clear authority for the decision;
- Whether the objectives of the new policy and the criteria against which it will be evaluated are clearly identified;
- Whether the agency charged with implementing and operating the policy will know exactly what Ministers have agreed;
- Where the recommendation is based on fact or judgement, this is clearly articulated;
- If the recommendation seeks a decision from the Minister/s concerned, is enough information provided on which to base this decision?
- In general, recommendations should use the following terminology:

Invite	A Minister to undertake certain action
Direct	Departments or officials to undertake a certain action

Agree	To a proposal or an action
Approve Authorise Defer Decline	A proposal
Note	A Cabinet decision that has previously been made. (Noting recommendations should be used sparingly.)

Writing Financial Recommendations for Cabinet Papers

53. Almost every recommendation that proposes a change in appropriations or expenses should include the following components:

- Action to be taken (e.g. "approve") - There are a number of conventions surrounding the use of some action words. These are spelled out in the Cabinet Office Manual;
- Proposal name - This should indicate the purpose of the proposed change. For capital contributions this should include the name of the recipient entity;
- Appropriation / revenue name - state this where it is different from the proposal name;
- Changes to appropriations / revenue - This should note both the direction and amount of the changes. All numbers need to be in accrual terms. Also note that Parliament appropriates in \$1000 units. Recommendations must be consistent with this;
- GST status - Where there is a GST component, recommendations should be GST inclusive. It should always be stated if the figures are GST inclusive or exclusive;
- Year(s) affected - Out-years should be included as appropriate. For instance, do the proposed expenses cease after a certain date or do they continue indefinitely? Where the proposal is limited to specific years the word "only" should be used to indicate this;
- Appropriation / revenue type - i.e. departmental output class, non-departmental output class, benefit expense, borrowing expense, departmental other expense, non-departmental other expense, capital contribution, Crown capital assets, repayment of debt, tax revenue, non-tax revenue, or capital receipts; and
- The Vote - i.e. Vote: Commerce, Vote: Business Development.

Indicators of adequate recommendations

There is a clear set of recommendations that flow from the logic of the analysis.

The recommendations stand alone, and make sense when read independently of the policy paper.

The recommendations are action focussed.

Recommendations comply with Cabinet Office Guidelines.

2.10 Present and Deliver Your Advice

54. The presentation of policy advice, whether it is written or oral, will influence whether or not the Ministry's advice is accepted. Good presentations that are clear, logical, succinct, jargon free, and clearly identify a recommended course of action will increase the likelihood of the Ministry's advice being accepted.

55. Good communication requires considerable attention to the message, the audience and the most suitable mode of delivery. Consider:

- What needs to be communicated;
- Who the audience will be;
- What the context of the communication will be (an informal ministerial briefing or a formal Cabinet Committee);
- How much time and freedom there will be to communicate the message (a set uninterrupted period or an undefined period over which others may interject); and
- The mode of communication that is likely to be most effective (a ten page report, a power point presentation, an oral briefing).

56. Ministers are busy people with limited time to read and understand long or complicated reports. If the report is going to Cabinet, some of the Ministers considering it may have no background knowledge of the subject that is being advised on. They may read only the executive summary and recommendations. In receiving policy advice Ministers are looking for:

- a clear and concise statement of the problem or issue and its significance to the advancement of their outcomes, goals or objectives;
- a description of viable options for addressing the issue and achieving the policy objective. Avoid putting up "straw man" options. They do little for the Ministry's credibility;
- a succinct and logical analysis of how the results of each option will contribute to the advancement of their desired outcomes, goals and objectives;
- clear identification of the relative costs and benefits of each option;
- advice on winners and losers and risks associated with each option;
- officials' advice on their preferred option and why;
- advice on whether or not the option is supported by key stakeholders and if not, why not; and
- a clear and logical set of recommendations that "stand alone" when read independently of the policy paper.

57. When drafting policy papers, you should:

- consider the needs and requirements of your audience;
- work out what you want to say prior to drafting (and seek your manager's agreement);
- allow sufficient time for editing, proofing and final QA;
- pay attention to formatting and headings. The paper should be logically set out, sections should be clearly and logically titled, and conclusions and recommendations should flow from the analysis;
- pay attention to language. Use plain and simple language. Avoid jargon and complexity. Assume that the reader is new to the subject;
- be succinct. Ministers will seldom read long papers;
- keep things as simple as possible; and
- pay particular attention to the executive summary and recommendations. In drafting these sections, assume that they will be the only sections of the paper read.

58. Last minute changes to papers are the most frequent causes of errors. It is crucial that adequate time is allowed for drafting, consultation and quality assurance.

59. Similar rules apply to the delivery of oral policy advice. Of particular importance is the need to plan what you are going to say prior to the meeting or presentation. Identify the key points that you want to make and the facts or arguments most relevant to these. Don't waste time on unimportant points. Consider whether or not visual aids, such as summary handouts, power point presentations or slide shows might assist in delivering the message.

60. Also remember that communication is a two way process. While the policy advisor is there to advise on a particular policy position, they should also be receptive to the views and issues raised by Ministers. Sometimes it will be necessary to clarify points, or to provide further information. On occasions, Ministers will raise issues that may require the policy advisor to rethink their advice.

Indicators that the presentation of policy advice is adequate

Advice is clear, logical and in plain language.

The policy issue is clearly stated and options to address it explained logically in terms of the policy objective and the advancement of Government outcomes, goals and objectives.

The costs, benefits, winners and losers of each option are clearly stated.

Any assumptions regarding the relative merits of options are clear.

The Ministry's advice is clear and identifiable.

There is a clear and concise executive summary.

The recommendations are logical, flow from the analysis and make sense when read alone.

Cabinet papers meet Cabinet Office requirements in terms of length, structure and substance.

³ State Services Commission (1999), *Looping the Loop: Evaluating Outcomes and Other Risky Feats*, Occasional Paper No. 7, Wellington.

Stage 3. Peer Review and Quality Assurance

- [3.1 Accountabilities for Quality Assurance](#)
- [3.2 Peer Review](#)
- [3.3 MPG Review](#)
- [3.4 Sign-Out](#)
- [3.5 Project Review](#)

61. Good processes of peer review and quality assurance are essential to maintaining and improving the quality of policy advice.

62. Quality assurance processes should provide for the ongoing review of the policy process. They should also test the technical quality of the analysis and the quality of its presentation prior to its delivery or communication.

63. A review of the project on its completion may also yield useful information on relative strengths and weaknesses. These findings can be usefully used to improve future processes of policy development and delivery.

64. The policy manager is responsible for ensuring adequate and effective peer review and quality assurance.

65. Peer review involves the focused review or critique of aspects of the policy project. It should be planned for and commissioned as part of the project-planning stage. The exact requirements for peer review will depend on the characteristics and complexity of the particular policy project. For instance, peer review of the project plan may be required for larger projects. For complex or technical projects, it may be desirable to commission an independent review of the analytical methodology or analysis. In most cases, review of the policy advice will be required prior to its sign-out in order to ensure logical presentation, accuracy of the material presented, compliance with Cabinet Office or other guidelines, readability and grammatical correctness. In all cases, review by MPG will be required to ensure overall compatibility and co-ordination of policy advice across the Ministry.

66. It is important that the requirement for peer review is not confused with the requirement for consultation. While it is important to ensure that the views of other government and non-government agencies are sought and considered, these are not a substitute for peer review. Other agencies are not accountable for the quality of the Ministry's analysis or advice, and may not share the Ministry's interest in ensuring the quality of its process management, technical analysis and advice. Peer review, by contrast, should be a well specified and focused method of assessing whether or not the Ministry's analysis and advice meets its own technical and process standards.

67. At the planning stage of the policy project it is important to consider what quality assurance and peer review will be required, and to build these into the policy process. Consider each of the following:

3.1 Accountabilities for Quality Assurance

- Establish accountabilities for quality assurance and peer review. Prior to undertaking the policy analysis identify who has formal accountability for ensuring that peer review is undertaken. Establish who is responsible for ensuring the quality of policy and its sign-out;
- Establish the need for, and gain approval to any required project plan;

3.2 Peer Review

- At the initial planning stage, consider what peer review will be required, by whom, and at what stages of the project. For instance, you may need to arrange for an independent or in-house expert to review your analysis or modelling of the issue or your assessment of options;
- Clearly specify your requirements for peer review. State the purpose of the review, the scope of the review, your expectations of the review, and how and to whom the review findings should be conveyed (to the analyst or the policy manager, verbally or in writing). For large or complex pieces of peer review, a written terms of reference may be useful;
- Seek review of any policy papers prior to their finalisation. The purpose of review is to check the logic of the analysis, the readability of any reports, the logic and structure of any recommendations, and the grammar, spelling and presentation of any written advice;

3.3 MPG Review

- Ministry Policy Group (MPG) review. This will usually be required following completion of issue identification stage and again prior to the finalisation and delivery of policy advice. Its purpose is to ensure consistency with other Ministry policy advice and operational objectives. It is not a substitute for other processes of quality assurance. Neither is MPG accountable for the quality of the policy advice;

3.4 Sign-Out

- Formal sign-out. The person responsible for policy analysis should formally sign the advice out and complete and file a signed [QA checklist](#).

3.5 Project Review

- Consider whether there will be a formal debrief or review of the policy project on its completion.

Stage 4. Documentation and Filing

68. Full documentation and filing of all policy papers, including all working papers, minutes of meetings, correspondence etc is necessary to meet the Ministry's audit and review requirements, and to ensure that the policy project or advice can be picked up or referred to at a later date.

69. This is particularly important for ensuring continuity of policy advice and avoiding the need to duplicate work and waste resources. It is also necessary if the Ministry is to meet its statutory audit and Official Information Act responsibilities.

70. As a general rule, the file should be sufficient to allow an incoming policy manager or analyst to pick up and resume the project from where it was left off in the event of staff changes. When filing material consider:

- the appropriate structure for the file (chronological or thematic);
- what material needs to be filed (all drafts of a paper or just the final draft); and
- who has responsibility for maintaining the file.

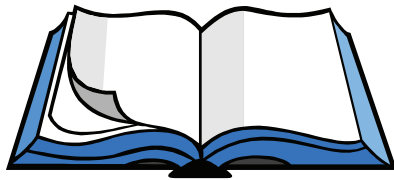
Indicators of adequate Quality Assurance

Quality assurance and peer review have been planned for at the beginning of the policy process.

Peer review occurs at the problem identification and option assessment phases. This will include, but will not necessarily be limited to, review by MPG.

The policy advice is formally signed by the responsible manager, with reference to the "policy assurance checklist", before it is presented to the client or Minister.

Session 6: Consultation



The Role of Consultation: The Foundation of Compliance

The Role of Consultation

- What does it mean?
- What does it require?
- Who should be involved?
- When and how often?
- Why do we consult?
- How does it contribute to good regulation?

What does Consultation Mean?

Consultation implies a process by which substantive input is sought from other agencies, the public, or from those with particular interest in the issue (“stakeholders”).

What does good consultation require?

Good consultation requires:

- Good faith;
- The purpose should be clear and understood;
- Relevant information should be provided;
- Those consulted should understand what is required of them;
- Decisions must not be taken until input is carefully considered.

Who should be consulted?

- Other groups within your own organisation;
- Other government agencies or departments;
- Non-government stakeholders;
- The public in general.

When and how often should you consult?

- Consider what is needed from each group consulted and when is the best time for this to add value to the process;
- Consider what information is needed to effectively participate by those consulted and when;
- Consider how much time is needed for the consultation process.

Why is consultation important?

Consultation should contribute to:

- Managing the expectations of those consulted;
- Assessing and managing potential risks;
- Clarification of the issues;
- Robust analysis;

How does consultation contribute to good regulation?

- By improving the quality of policy advice and decisions;
- By improving the participation and 'buy in' by those consulted;
- By easing the implementation of decisions if stakeholders already understand what needs to be done, why and by when.

Consultation Appendix 1:

CAB 100/2002/1

Consultation on Cabinet and Cabinet Committee Submissions Certification by Department

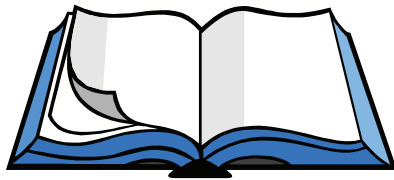
<p>Departments consulted: The attached submission has implications for the following departments whose views have been sought and are accurately reflected in the submission:</p> <p>.....</p> <p>.....</p>		
<p>Departments informed: In addition, the following departments have an interest in the submission and have been informed:</p> <p>.....</p>		
<p>Others consulted: Other interested groups have been consulted as follows:</p> <p>.....</p>		
Signature	Name, Title, Department	Date / /

Certification by Minister

<p>Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee. The attached submission:</p>		
Consultation at Ministerial level	<input type="checkbox"/> did not need consultation with other Ministers <input type="checkbox"/> has been the subject of consultation with the Minister of Finance <i>[required for all submissions seeking new funding]</i> <input type="checkbox"/> has been the subject of consultation with the following Minister(s)	
Consultation with Government MPs	<input type="checkbox"/> does not need consultation with the government caucuses <input type="checkbox"/> has been or will be <i>[specify which]</i> the subject of consultation with the following government caucuses: <input type="checkbox"/> Labour caucus <input type="checkbox"/> Progressive Coalition caucus	
Consultation at Parliamentary level	<input type="checkbox"/> does not need consultation at parliamentary level <input type="checkbox"/> has been or will be <i>[specify which]</i> the subject of consultation with the following other parties represented in Parliament:	
Signature	Portfolio	Date / /

* From the Step by Step Guide: Cabinet and Cabinet Committee Processes 2001. Cabinet Office, Department of the Prime Minister and Cabinet, Wellington, New Zealand. www.dPMC.govt.nz. And <http://www.dPMC.govt.nz/cabinet/guide/append.html>.

Session 7: Legislation



Turning Policy into Legislation: The New Zealand Process

Legislation in general

Legal rules are found in legislation more and more often and cover a broad range of subject areas and activities and can include rules;

- For maintaining the structure of society;
- Regulating relations between individuals;
- Regulating activities in a modern industrial society;
- Providing and maintaining essential services
- Facilitating private activity
- Gathering of taxes to finance public services
- Establishing institutions to carry out activities

Legal rules

- Legislation imposes restraints on individuals and groups in society;
- Legislation also confers and protect important rights, liberties and benefits;
- Legislation only works if majority see it as supporting and protecting their interests

High quality legislation

High quality legislation:

- Endures
- Does not need frequent amending
- Gives effect to the government's policies
- Reduces fiscal risk to the government
- Avoids the courts having to decide what it means
- Reduces compliance costs for users
- Limits the scope for avoidance

Effective legislation

Developed in response to needs in society and accepted through:

- Legislation being made only when needed to give effect to the policy which the Government is planning to implement;
- Adherence to adequate process. Follow proper procedures in preparing the legislation, in particular by consulting appropriately outside Government and within it;
- Being in accordance with legal principles. Ensure that the legislation complies with established principles, unless there is good reason for departing from them;
- Being technically sound, consistent with existing law;
- Being accessible, understandable

Understandable and accessible legislation

- Has sufficient time and consideration been given to the preparation of the legislation?
- Have departmental lawyers been fully involved?
- Has the drafter fulfilled his or her role?
- Is the legislation understandable and accessible?

Sufficient time and consideration for preparing legislation

Guidelines:

- Take time and care in developing policy to ensure that it is coherent, consistent, and workable;
- Ensure the detailed machinery and other provisions are properly worked out;
- Bring departmental lawyers in as soon as possible to ensure understanding when translate policy into legislation;
- Get advice on the design of the legislative scheme from drafters;
- Allow a realistic timeframe;
- Legislation should give effect to policy without unnecessary complications for those who must comply.

Role of the departmental lawyer

Guidelines:

- Advise on legal aspects to inform the policy development process
- Translate policy decisions into drafting instructions
- Need a thorough understanding of the policy and how the proposal fits into the general law;
- Liaise with PCO in drafting process
- Advise on further aspects of the policy and legislative process as they arise

Role of the drafter

Advice and drafting services in a professional and impartial manner to ensure that legislation:

- Complies with fundamental legal principles;
- Complies with the parliamentary criteria;
- Is workable and effective;
- Is clear and unambiguous;
- Will withstand challenge or adverse criticism in the Courts;
- Does not impose unnecessary or unreasonable compliance costs.

Consistency with Basic Principles: legal and constitutional system

- Does the legislation comply with fundamental common law principles?
- Have vested rights been altered?
- Have pre-existing legal situations been affected?
- Does the legislation enable the levying of money?

Compliance with fundamental common law principles?

Guidelines:

- Necessary to check that proposed legislation (or policy proposal) complies with fundamental common law principles.
- Courts will interpret consistently with fundamental principles unless there is a clear intention to depart from these
- If non-compliance, must be good reason
- Reason should be referred to the Attorney-General

Common law principles

Basic Common law principles: broad areas

- tort (eg negligence)
- contract
- equity
- statutory interpretation
- judicial review

Have vested rights changed?

Guidelines:

- If legislation would implement a taking of property, consideration should be given to whether compensation should be paid to those affected.
- Where legislation would constitute a taking of property and it is not intended that compensation will be paid, the legislation should make this quite clear.

Have pre-existing legal situations been affected?

Guidelines:

- Unless there is clear provision to the contrary in legislation, legislation will apply prospectively. However, consideration should be given to the impact of legislation on existing situations. A number of factors should be considered. The overall question is fairness to those affected.
- Another consideration is whether it is necessary for effective administration for the law to affect existing situations.
- The questions to ask are:
 - Is there a case for retrospectivity? and
 - If it is, would the judgment, if it is continued in effect, nullify the substance of the legislation?

Does the legislation enable the levying of money?

Guidelines:

- A fundamental constitutional principle is that only Parliament may raise a tax. (Section 22 of the Constitution Act 1986 provides that it is not lawful for the Crown to levy a tax except by or under an Act of Parliament.)
- Legislative authority for fees is usually through including empowering provisions in an Act authorising regulations to fix fees or charges.
- Fees should bear a proper relation to the cost of providing the service or performing the functions
- Any cross-subsidisation should be explicit

Fees

Fees should be prescribed by regulation if they are charged for services or functions-

- Standard to Government (eg the issue of passports)
- Over which the user has no choice or contractual control
- Which the Government has an interest in ensuring is not overpriced (the issue of practising certificates at a price which does not exclude entry to the profession).

Other elements of good legislation

- Statutory interpretation rules followed;
- Individual and group rights taken into account;
- International obligations considered;
- Cross- border issues taken into account;
- Relationship to existing law considered;
- Care taken when creating new public powers;
- Care taken when creating new public bodies,

Statutory interpretation

Guidelines:

If there is a dispute about the meaning of legislation, the courts interpret words by applying rules and conventions:

- The Act will be read as a whole. Any indications provided in the Act may be used for interpretation.
- Courts can go no further than to interpret the plain meaning of the words of the Act:
- The courts will take a variety of matters external to the Act into account when interpreting, including:
 - treaties;
 - the common law;
 - other statutes;
 - documents created during the legislation's inception.
- Courts attempt to interpret Acts consistently with fundamental values of the legal system, many but not all of which are contained in the Bill of Rights Act. Those preparing legislation should attempt to ensure that it is consistent with these values.

Individual/group rights obligations for legislation

- Treaty of Waitangi
- New Zealand Bill of Rights Act 1990
- Human Rights Act 1993

International obligations and standards

- Are there any international obligations and standards relevant to the legislation?
- If so, does the legislation properly implement those international obligations and standards?

Are there international obligations and standards?

A fundamental principle of international law is that treaties are binding on the parties to them and must be performed in good faith.

- Vienna Convention on the Law of Treaties (article 26);
- Over 900 multilateral, 1400 bilateral treaties and of the 700 Acts in force, 92 expressly refer to treaties;
- A range of instruments (treaties) include agreements, arrangements, exchange of letters, conventions, protocols, covenants;
- Customary International law is also an important source of NZ obligations (state practice).
- NZ is bound to ensure domestic laws are consistent with or give effect to international obligations from agreements.

Guideline: Those preparing legislation should identify all international obligations and standards that are relevant to the legislation. Consult MFAT.

Does legislation properly implement the international obligations?

International obligations may be incorporated directly or indirectly:

- “Force of Law” formula method if treaty is self-contained body of law that does not require any operational machinery to support it;
- Wording method can be used if operational machinery is required to support implementation, and can be used in conjunction with the formula method.
- Subordination method should be used if Parliament wishes to delegate technical matters to the Executive. (in conjunction with formula and wording methods)

Cross-border issues

- Are there cross-border issues?
- What is the intended scope of the NZ legislation?
- Are special rules required for civil claims or criminal offences with cross-border elements?
- Will a regulatory agency that is responsible for the regime be able to perform effectively in cross-border cases?
- Should legislation provide for cross-border recognition or enforcement of decisions?

Are there cross-border issues?

Cross-border issues often arise when:

- There are dealings across borders;
- The conduct of persons inside NZ affect persons outside NZ and vice versa;
- NZ civil proceedings involve overseas persons or dealings governed by foreign law;
- Overseas civil proceedings raise issues of NZ law;
- Detection, investigation, enforcement of NZ law require overseas information or evidence;
- Overseas recognition or enforcement of NZ determinations may be needed;
- Cooperation with other States is needed to give effect to NZ policy;
- Treaties or other international obligations are relevant.

What is the intended scope of the NZ legislation?

If cross-border factors are relevant, the legislation should expressly set out 'connecting factors' which involves identifying whether:

- Certain conduct or events occur in NZ;
- A person is present, resident,.....in NZ at the time of certain events or commencement of proceedings;
- A person is a NZ national;
- A transaction is governed by NZ law;
- Certain property is situated in NZ;
- Certain consequences occur in NZ and level of knowledge of person as to whether consequences would occur in NZ.

Are special rules required for civil or criminal claims involving cross-border issues?

Civil:

- Careful consideration must be given to questions of jurisdiction, and relationship between substantive rights and jurisdiction;
- Proceedings must be capable of being commenced against defendants outside NZ when appropriate (consult Ministry of Justice if special regime is proposed);
- If likely that claims will be pursued overseas, liability regime should be designed to accommodate.

Criminal:

- Only depart from general rules in exceptional cases;
- Any special jurisdictional rules should be consistent with international law principles.
- Consult Justice and MFAT.

Effective Regimes in Cross-border Cases?

For new regulatory agencies:

- Consider whether agency will need assistance from overseas and include;
- Appropriate mechanisms should be included to facilitate cooperation to support the integrity of regulatory regime;
- Provide for application of the regulatory regime to cross-border activities;
- Provide for cross-border enforcement.
- Consult Justice and MFAT.

For cross-border recognition and enforcement regimes:

- Consider providing for recognition when NZ legislation prescribes standards or other regulatory requirements;
- Enforcement regime may be needed where NZ legislation provides for civil remedies, and steps should be taken to enter into appropriate arrangements with other countries.
- Enforcement and recognition may be appropriate when regulatory regime requires cross-border effectiveness.

Relationship to existing law

- Has all other relevant legislation been considered?
- Has the common law been considered?
- Are transitional or savings provisions required?

All other relevant legislation

- Identify all existing relevant legislation
- The best precedent from existing legislation should be used - avoid "reinventing the wheel".
- In general, new legislation should not restate matters that are already provided for in other legislation.

Creation of a new public power

- If a new public power is proposed, is it needed or are suitable powers available under existing law?
- Who is the appropriate person to have the power?
- Has a process for exercising the power been established?
- Has the power and process been clearly stated?
- What protections have been included for those who could be affected by the exercise of the power?

Is the new power needed?

- Do not create a public power unless it is really necessary;
- Consider other options to meet policy objective (ie Chapter 1 options);
- If other options exist, use them if possible.

Who should have the power?

The following factors should be considered when deciding who should have a public power:

- The importance of the individual rights and interests involved;
- The importance of the public or state interest involved;
- The character of the issues to be decided (for instance fact, policy, discretion, law);
- The expertise to be expected of the decision-maker; (continued)

Who should have the power? (continued)

- The context, including the administrative one, in which the issue is to be resolved
- The existence of other safeguards over the exercise of the power
- The procedure commonly used by the proposed decision-maker
- The advantage or disadvantage of having a body independent of the government and other public controls making the decision or carrying out the function.

Process for exercise of the power

The following factors should be considered when determining the method of decision making and how the power should be exercised:

- The characteristics of the power, the issues to be resolved, the interests affected;
- The qualities and responsibilities of the decision maker;
- The procedure to be followed. (continued)

Process for exercise of the power (continued)

The procedure to be followed will depend on whether the decision-maker should:

- Give a fair hearing;
- Consult;
- Give public notice and invite comment;
- Decide on a more summary basis.

Power and process must be clearly stated

- The legislation should state -
- What the power is
- In what circumstances can it be exercised? Is the exercise of the power discretionary or mandatory once the circumstances are established?)
- What matters should, may, or must not be considered?
- For what purposes may or must the power be exercised, and what purposes are improper?

Protections

- The more serious the consequence of the decision for individual rights and interests then the more protection should be given the persons affected.
- This "protection" should take the form of:
 - the independence of the decision-maker
 - the procedure to be followed
 - the specificity of standards, criteria and rules
 - rights of appeal and review.
- However, a broader public interest may prevail over an individual right or interest.

Creation of a new public body

If a new public body is to be created should it be –

- a Department of State?
- A State enterprise?
- An Office of Parliament?
- A Crown entity?
- Do Ombudsmen Act 1975, Official Information Act 1982, and/or Local Government Official Information and Meetings Act 1987 apply?

Legislation Appendices

Legislation Appendix 1: Resources

The following information is available as resources:

LAC Guidelines:

- Set out important matters relating to process and content that need to be considered in the promotion of legislative change whether through:
 - statute
 - regulation
 - rules, orders, notices or other subordinate legislation
- Are a comprehensive background on issues of legislative importance available at: <http://www.justice.govt.nz/lac/index.html>

Step by Step Guide: Cabinet and Cabinet Committee Processes 2001

- Sets out the processes approved by the NZ Cabinet.
- Available online at: <http://www.dpmc.govt.nz/cabinet/guide/3.html>

Cabinet Manual 2001:

- The authoritative guide to NZ central government decision making. A primary source of information on constitutional and procedural matters.
- Available online at: <http://www.dpmc.govt.nz/cabinet/manual/index.html>

Legislation Appendix 2: Common Law Principles

- Dignity of the individual is a paramount concern of the law;
- Legality ie legislation will be interpreted in a manner consistent with legal principles;
- The principle that the citizen is entitled to have access to the courts, despite legislation which might be construed to remove it;
- The principle that construction of legislation is a matter for the courts and not the executive;
- No-one will be required to perform something that is impossible; (the principle relating to non-retrospectivity);
- No-one is guilty of a crime who has not committed a criminal act with knowledge of the facts that make it criminal;
- A citizen is not required to answer questions by anyone including officials;
- Liberty of the subject;
- No-one may be penalised except by a general measure rather than by act of attainder;
- No tax will be imposed except by Parliament;
- Property will not be expropriated without full compensation;
- Everyone exercising public authority must act legally, reasonably, and honestly, including
 - giving a person who may be adversely affected by a decision the opportunity to respond;
 - satisfying minimum standards of competence. The rule of law that no-one, including the Crown in exercise of executive authority, is above the law
- All are treated equally under the law;
- NZ's constitutional conventions are not infringed;
- NZ law conforms with both international law and our treaty obligations; in particular the Treaty of Waitangi;
- Delegated authority must be exercised within the power actually conferred, despite use of subjective language;
- Foreign tax legislation is unenforceable in NZ courts.

Legislation Appendix 3: Checklist for Cross-Border Issues

At an early stage in policy development, it is important to identify the nature and significance of cross-border issues. Any policy and implementing legislation should take into account the followings factors:

- Dealings across borders;
- Persons outside NZ whose conduct affects persons in NZ;
- Persons in NZ whose conduct affects persons overseas;
- Civil proceeding in NZ involving overseas parties;
- Civil proceedings in NZ concerning dealings governed by foreign law;
- Civil proceedings overseas raising issues of NZ law;
- Information or evidence overseas required for the purpose of detection and investigation of breaches, and enforcement action;
- Whether NZ determinations or NZ law obligations will be recognised or enforced overseas, and vice versa;
- Whether cooperation with other States is needed to give effect to the policy;
- Whether there are applicable treaties, or other international obligations.

Legislation Appendix 4:

Checklist for Departments*

The following checklist is a general guide to help you ensure that the basic requirements for a Cabinet committee paper have been met before sending the paper to the Minister's office for signature. (Your department will probably also have its own requirements in addition to those listed below.) Details on the following points are provided in the preceding chapters.

- Minister's office has been advised that paper is coming.
- Paper follows Cabinet requirements on format, length and so on; attachments are attached.
- Paper has paragraph and page numbering.
- All interested departments have been consulted and their views reflected accurately in the paper.
- Paper includes a statement about compliance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, if appropriate.
- Recommendations cover all decisions required and will make sense independently when turned into minutes.
- Financial recommendations are adequate and the Treasury has been consulted.
- If new appropriations are sought, the consultation required between the portfolio Minister and the Minister of Finance has been discussed with your Minister's office.
- A regulatory impact statement and a business compliance cost statement are attached, if appropriate.
- The current CAB 100 form is attached. It lists departments that have been consulted and has been signed by an official.
- If the paper is about an appointment, CAB 50 and CAB 51 forms are attached and all requirements have been met.
- All internal departmental requirements have been completed.
- Paper has been considered by an officials' committee, if appropriate.
- Preparations have been made to supply additional copies of any large attachments, if necessary.
- Paper is submitted on time to allow the Minister to undertake required ministerial consultation and the Minister's office to obtain Minister's signature before the Cabinet Office deadline.

* From the [Step by Step Guide: Cabinet and Cabinet Committee Processes 2001](#). Cabinet Office, Department of the Prime Minister and Cabinet, Wellington, New Zealand. www.dpmc.govt.nz. And <http://www.dpmc.govt.nz/cabinet/guide/append.html>.

Legislation Appendix 5: LAC Guidelines CHECKLIST*

Issue	Yes/No/Comment
<p>CHAPTER 1 Means of achieving the policy objective</p> <p>1.1 Has the policy objective been clearly defined? 1.2 Has consideration been given to achieving the policy objective other than by legislation? 1.3 Has there been appropriate consultation within the Government? 1.4 Have those outside the Government who are likely to be affected by the legislation been consulted? 1.5 Have all Cabinet requirements for new legislation been complied with?</p>	
<p>CHAPTER 2 Understandable and accessible legislation</p> <p>2.1 Has sufficient time and consideration been given to the preparation of the legislation? 2.2 Have departmental lawyers been fully involved? 2.3 Has the drafter fulfilled his or her role? 2.4 Is the legislation understandable and accessible?</p>	
<p>CHAPTER 3 Basic principles of New Zealand's legal and constitutional system</p> <p>3.1 Does the legislation comply with fundamental common law principles? 3.2 Have vested rights been altered? If so, is that essential? If so, have compensation mechanisms been included? 3.3 Have pre-existing legal situations been affected, particularly by retroactivity? If so, is that essential? What mechanisms have been adopted to deal with them? 3.4 Does the legislation enable the levying of money? If so, is the levy a tax imposed other than by Parliament?</p>	
<p>CHAPTER 3A Statutory interpretation</p> <p>3A.1 Have the rules of statutory interpretation been considered? 3A.2 Has the Interpretation Act 1999 been considered?</p>	
<p>CHAPTER 4 New Zealand Bill of Rights Act 1990 and Human Rights Act 1993</p> <p>4.1 Is the legislation consistent with the New Zealand Bill of Rights Act 1990? If not, is it a justified limitation?</p>	

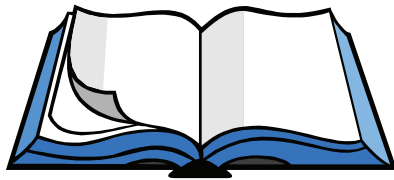
4.2 Is the legislation consistent with the Human Rights Act 1993? If not, is it a justified exception?	
<p>CHAPTER 5 Principles of the Treaty of Waitangi 5.1 Should there be consultation with Maori? If so, what form should the consultation take? 5.2 Is there a possibility of conflict between the principles of the Treaty and the legislation? If so, should uncertainty be avoided by including an appropriate provision in the legislation? 5.3 Are any Maori rights and interests affected by the legislation recognised at common law? If so, have they been clearly identified and addressed by the legislation?</p>	
<p>CHAPTER 6 International obligations and standards 6.1 Are there any international obligations and standards relevant to the legislation? 6.2 If so, does the legislation properly implement those international obligations and standards?</p>	
<p>CHAPTER 7 Relationship to existing law 7.1 [Replaced by Chapter 3a] 7.2 Has all other relevant legislation been considered? 7.3 Has the common law been considered? 7.4 Are transitional or savings provisions required?</p>	
<p>CHAPTER 8 Creation of a new public power 8.1 If a new public power is proposed, is it needed, or are suitable powers available under existing law? 8.2 Who is the appropriate person to have the power? 8.3 Has a process for exercising the power been established? 8.4 Has the power and process been clearly stated? 8.5 What protections have been included for those who could be affected by the exercise of the power?</p>	
<p>CHAPTER 9 Creation of a new public body If a new public body is to be created, what should it be- 9.1 a Department of State? 9.2 a State enterprise? 9.3 an Office of Parliament? 9.4 a Crown entity? 9.5 Is it clear whether the Ombudsmen Act 1975, the Official Information Act 1982, and the Local Government Official Information</p>	

and Meetings Act 1987 apply to the body?	
<p>CHAPTER 10 Delegation of legislative power</p> <p>10.1 Is it appropriate for primary legislation to contain a delegation of legislative power? 10.2 What procedures should be specified to control the process of making the delegated legislation? 10.3 To whom should the delegation be made? 10.4 Is a provision for "deemed regulations" appropriate? 10.5 Is a provision for a "subdelegation" appropriate? 10.6 Is the use of "incorporation by reference" appropriate? 10.7 If the legislation includes a power to give policy directions, has the appropriate process been followed?</p>	
<p>CHAPTER 10A The exercise of delegated legislative power</p> <p>10A.1 Have the terms of the empowering provision and the general law been complied with when making the delegated legislation? 10A.2 Is the proposed delegated legislation beyond the power conferred by the empowering provision? 10A.3 Does the proposed delegated legislation contain an unlawful subdelegation? 10A.4 Is the proposed delegated legislation invalid by reason of repugnancy to any other enactment? 10A.5 Is the proposed delegated legislation invalid by reason of uncertainty? 10A.6 Does the proposed delegated legislation infringe any of the grounds set out in Standing Order 382?</p>	
<p>CHAPTER 11 Remedies</p> <p>11.1 If remedies are required, which of the range of remedies is appropriate? 11.2 Should an existing civil remedy be applied? 11.3 Should new remedies or processes be established? 11.4 Should a special limitation period be established?</p>	
<p>CHAPTER 12 Criminal offences</p> <p>12.1 Is it necessary to create a new offence? 12.2 Has the appropriate mental element been determined? 12.3 Are appropriate defences available? 12.4 Is the offence a summary or indictable offence, and is this appropriate? 12.5 If the offence is an infringement offence, is this appropriate? 12.6 Has an appropriate range and level of penalties been determined? 12.7 What is the appropriate limitation period?</p>	

<p>CHAPTER 13 Appeal and review 13.1 Should the legislation provide a right of appeal? 13.2 Have the proper criteria for choosing the appellate body been applied? 13.3 Have the proper criteria for choosing the type of appeal been applied? 13.4 Does the legislation specify the appropriate appellate procedure? 13.5 Does the legislation give sufficient guidance for the purposes of judicial review on the grounds of error of law? 13.6 Does the legislation give sufficient guidance for the purposes of judicial review on the grounds of breach of natural justice? 13.7 Does the legislation unduly restrict judicial review?</p>	
<p>CHAPTER 14 Powers of entry and search 14.1 Are powers of entry and search necessary? 14.2 Are the powers conferred justified, and have appropriate safeguards been included?</p>	
<p>CHAPTER 15 Powers to require and use personal information 15.1 Does the legislation affect privacy interests? 15.2 Has the Privacy Act 1993 been complied with?</p>	
<p>CHAPTER 16 Cross-border issues 16.1 Are there cross-border issues that should be addressed? 16.2 What is the intended scope of the NZ legislative regime? 16.3 Are special rules required for civil claims with cross-border elements? 16.4 Are special rules required for criminal offences with cross-border elements? 16.5 Will any regulatory agency responsible for the regime be able to perform its role effectively in cross-border cases? 16.6 Should the legislation provide for recognition or enforcement of overseas decisions in New Zealand, or vice versa?</p>	

* Found in the Legislation Advisory Committee Guidelines. Guidelines on Process and Content of Legislation, 2001 editions, Legislation Advisory Committee May 2001. and 2003 Supplement to 2001 Edition, Legislation Advisory Committee, July 2003. Online link: <http://www.justice.govt.nz/lac/index.html>

Session 8: The Regulatory Environment



Developing the Regulatory Environment:

The New Zealand Model

Regulatory Framework

- Part 1: The Delegation of Legislative Power
- Part 2: The Exercise of Delegated Legislative Power

Part 1: Delegation of Legislative Power

- Parliament has powers to make law but can delegate that power to other bodies
- Delegation is necessary and appropriate if:
 - lack of Parliamentary time;
 - detailed or technical material;
 - legislation need in rapidly changing situations;
 - There is an emergency.

Delegation of law-making power

- Is a delegation of power appropriate?
- What procedures should control the process of making delegated legislation?
- Delegation to appropriate person
- Are “deemed regulations” (ie rules) appropriate?
- Is “incorporation by reference” appropriate?

Is a delegation of power appropriate?

- Matters of policy, provisions for taxes, and criminal offences should generally be included in the primary statute
- Matters of detail OK in delegated legislation
- Fees for services OK in delegated legislation
- Henry VIII clauses OK in exceptional circumstances

Procedures to control process of making delegated legislation

- Existing controls: publication, disallowance, select committee scrutiny, Cabinet processes
- Consider including requirements for:
 - Notice and consultation
 - Confirmation of the secondary legislation

Delegation to appropriate person

- When deciding who to delegate a legislative power to, consider:
 - the importance of the power
 - the relevant expertise of the lawmaker
 - the controls over exercise of the power.

“Deemed” regulations

- Are “deemed regulations” (ie rules) appropriate?
- Is sub-delegation appropriate?
- Is “incorporation by reference” appropriate?
- If there is a power to give policy directions, has the right process been followed?

Incorporation by reference

Legislation which includes incorporation by reference should be considered in light of the following principles of good law:

- Parliament must make or authorise the law:
- Parliament should have control over delegated legislation:
- An appropriate process should be followed in making the law:
- Obligations imposed by legislation should be certain and understandable by those affected:
- All legislation should be published in a form and manner that enables ready access by those affected.

Part 2: The exercise of delegated legislative power

- Does it comply with the empowering provisions?
- Does it go beyond the power conferred by the empowering provision?
- Does it contain an unlawful subdelegations?
- Is it invalid by reason of repugnancy to any other enactment?
- Is it invalid by reason of uncertainty?
- Does it infringe any of the grounds required by Parliament?

Does delegated legislation comply?

There are general rules that control the exercise of delegated legislation including:

- The empowering provisions must be in force;
- Retrospective delegated legislation must be expressly authorised;
- Consultation is likely to be required by ‘good practice’ or empowering provisions;
- Other preconditions may exist in empowering provisions

Guideline: Before exercising power, ensure any preconditions are satisfied and referred to in enactment if appropriate.

Has the delegated legislation gone beyond the power conferred?

This is a question of statutory interpretation;

- The empowering provision interpreted in accordance with Interpretation Act 1999 (section 5(1));
- The broader the powers conferred, the less likely Court would find power is exceeded;
- Even wide empowerment is limited to promoting objectives and policy of the Act;
- Empowering provision likely to include standard general power "providing for any other matters contemplated by this Act, necessary for its administration or necessary for giving it full effect";
- The Courts will look at 'reasonableness'.

Guideline: Before exercising power to make delegated legislation, ensure it is within the power conferred by empowering provision.

Does the delegated legislation contain an unlawful subdelegation?

In general:

- Power to make delegated legislation must only be exercised by person or body authorised by empowering provision;
- The power to make cannot be subdelegated unless the empowering provision expressly permits.

Guideline: Before exercising power to make delegated legislation, ensure it does not contain an unauthorised subdelegation.

Invalid by reason of repugnancy to any other enactment?

In general:

- Delegated legislation cannot override any primary legislation;
- Will not be interpreted inconsistently with any other Act;

In particular:

- The Court of Appeal has said if empowering provision does not expressly authorise the making of a regulation inconsistent with the NZ Bill of Rights Act 1990, an inconsistent regulation will be ultra vires.

Guideline: Before exercising power to make delegated legislation, ensure it is not inconsistent with any other enactment, especially the Bill of Rights.

Is the delegated legislation invalid by reason of uncertainty?

Reflects the fundamental principle of good law that requires it to be certain and understandable by those affected.

Guideline: Before exercising the power to make delegated legislation, ensure the rights and obligations set out are certain and understandable.

Does the delegated legislation infringe the grounds set out for disallowance?

Parliament has made rules (Standing Order 378 as amended in 2003) that set out nine grounds which may give cause for the Regulations Review Committee to draw the regulations to the attention of the House. (Refer to Appendix 5).

- <http://www.clerk.parliament.govt.nz/NR/rdonlyres/A4F2FA15-FCB9-46E3-A2A4-9C15DACACD86/11092/SO2003.pdf> (Standing Orders)
- <http://www.vuw.ac.nz/nzcpl> (Regulations Review Committee Digest)

Guideline: Ensure that the delegated legislation does not infringe any of these grounds.



Regulations Appendices



Regulations Appendix 1: Standing Order 378

378 Drawing attention to a regulation

- (1) In examining a regulation, the committee considers whether it ought to be drawn to the special attention of the House on one or more of the grounds set out in paragraph (2).
- (2) The grounds are, that the regulation—
 - (a) is not in accordance with the general objects and intentions of the statute under which it is made;
 - (b) trespasses unduly on personal rights and liberties;
 - (c) appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;
 - (d) unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal;
 - (e) excludes the jurisdiction of the courts without explicit authorisation in the enabling statute;
 - (f) contains matter more appropriate for parliamentary enactment;
 - (g) is retrospective where this is not expressly authorised by the empowering statute;
 - (h) was not made in compliance with particular notice and consultation procedures prescribed by statute;
 - (i) for any other reason concerning its form or purport, calls for elucidation.



Regulations Appendix 2:

Format for papers on regulations ready for submission to Executive Council*

8.12 Papers that are submitted to LEG seeking approval for the submission of regulations to the Executive Council must follow the format set out below. The form indicates the headings to be used. Each heading must appear in the submission. Write "not applicable" if the heading is not relevant to the regulations.

8.13 All papers submitted to LEG must also comply with the relevant requirements and format of standard Cabinet papers, such as the 10 page rule, and the requirement for an executive summary if the body of the paper is more than four pages long.

* From the Step by Step Guide: Cabinet and Cabinet Committee Processes 2001. Cabinet Office, Department of the Prime Minister and Cabinet, Wellington, New Zealand. www.dpmc.govt.nz. And <http://www.dpmc.govt.nz/cabinet/guide/append.html>.

In Confidence

[In Confidence is the security classification generally used for draft regulations and bills]
Office of the Minister of [xx]

Cabinet Legislation Committee

Title - use the full title of the regulations unless the paper deals with several sets of regulations.

Proposal

1 Briefly state what is proposed in the paper.

Policy

2 Give a succinct statement of the policy or proposal to be implemented by the regulations. Summarise any significant background information, including any relevant financial matters, and give references to previous Cabinet and Cabinet committee decisions.

3 If the regulations are entirely routine, and do not require any new policy decisions, including a clear statement to that effect.

4 If changes to fees are proposed, give the following information:

- a. current and proposed fees (including GST), and the percentage change;
- b. date on which the fee was last changed; and
- c. justification for the new figure, including reference to the Cabinet minute approving the change.

5 If the regulations have the effect of amending, suspending or otherwise altering a provision in any statute, explain the effect on the statute and why the amendment is necessary.

Timing and 28 day rule

6 Set out the timing for the making and coming into force of the regulations. If the regulations need to be made by a particular date, give the date and reasons. If a waiver of the 28 day rule is sought, explain why.

Compliance

7 Indicate whether the regulations comply with each of the following, with reasons if the regulations do not comply (list each sub-heading):

- a. principles of the Treaty of Waitangi;
- b. rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- c. principles and guidelines set out in the Privacy Act 1993 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
- d. relevant international standards and obligations; and
- e. *LAC Guidelines: Guidelines on Process and Content of Legislation*, a publication by the Legislation Advisory Committee.

Regulations Review committee

8 Indicate whether there may be grounds for the Regulations Review Committee to draw the regulations to the attention of the House under Standing Order 378.

Certification by Parliamentary Counsel

9 State that the draft regulations were certified by parliamentary counsel as being in order for submission to Cabinet. If parliamentary counsel have noted any reservations, set these out.

Other matters (optional heading)

10 Set out any other matters which Ministers should be aware of when considering the draft regulations.

Regulatory impact and compliance cost statement

11 State whether a regulatory impact statement (RIS)/business compliance cost statement (BCCS) was prepared in accordance with [requirements], and was submitted at the time that Cabinet or Cabinet committee approval of the policy relating to the regulations was sought.

12 If an RIS is **required** for the proposal and has not previously been submitted to Cabinet or a Cabinet committee at the policy approval stage, then it should be attached to the paper.

13 If an RIS is **not required**, then state that an RIS is not required because it falls within one of the exemptions (specifying which one). See [paragraphs 3.32 - 3.33](#) for the exemptions.

Publicity

14 Briefly set out what steps, if any, are to be taken to publicise the new regulations.

Consultation

15 Briefly set out the consultation that has taken place in the course of developing the policy and draft regulations. Papers on regulations must comply with standard consultation requirements for all submissions to Cabinet and Cabinet committees.

16 In particular:

- a. the Treasury must be consulted if changes to fees are proposed;
- b. the Audit Office *Guidelines to Costing and Charging for Public Sector Goods and Services (1989)* should be consulted if cost recovery is involved;
- c. the Ministry of Justice must be consulted on proposals to create new or alter existing criminal offences and penalties; and
- d. the Ministry of Justice must be consulted on proposals that raise issues of compliance with the New Zealand Bill of Rights Act 1990.

Recommendations

17 The standard wording for recommendations is "I recommend that the Cabinet Legislation Committee authorise the submission to the Executive Council of the [title of regulations]".

18 Specific recommendations will be needed if a waiver of the 28 day rule is sought. These should briefly state the date on which it is recommended that the regulations come into force and the reasons why it is proposed that the regulations come into force on that date. The standard format for such recommendations is as follows:

I recommend that the Cabinet Legislation Committee:

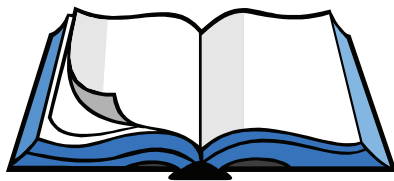
1. note that the regulations [briefly describe the nature of the regulations];
2. authorise the submission to the Executive Council of the [title of regulations];
3. note [give detailed reasons why the waiver is sought]; and
4. agree to the waiver of the 28 day rule so that the regulations can come into force on [date].

19 Further recommendations may occasionally be required if an aspect of the policy contained in the proposed regulations has not yet been approved by Cabinet.

[signature of Minister]
[title of Minister]

* From the [Step by Step Guide: Cabinet and Cabinet Committee Processes 2001](#). Cabinet Office, Department of the Prime Minister and Cabinet, Wellington, New Zealand. www.dpmc.govt.nz. And <http://www.dpmc.govt.nz/cabinet/guide/append.html>.

Session 9: Compliance and Enforcement



Efficient and Effective Compliance: Sanctions, Penalties, and Enforcement

Remedies and Enforcement

- Part 1: New and existing civil remedies
- Part 2: Criminal offences
- Part 3: Appeal and review

Part 1: New and existing (civil) remedies

- If remedies are required, which of the range of remedies is appropriate?
- Should an existing civil remedy be applied?
- Should new remedies or processes be established?
- Should a special limitation period be established?
- Are special rules needed for civil claims with cross-border issues?

If remedies are needed, what remedies are appropriate?

Guidelines:

- Consider the full range of regulatory instruments available to obtain the desired policy outcomes (usually the best outcomes will be achieved by using a mixture of regulatory instruments).
- Consider the nature of the process required for enforcement, and in particular whether, and to what extent, the State has a role in enforcement of the legal rules established by the legislation.
- Consider whether any specialist institution or agency needs to be created to oversee or assist in the enforcement of the legislation.

Should an existing remedy be applied?

Guidelines:

- Consider whether existing civil remedies available under the common law or the statute law are applicable, and if so, whether they are adequate and appropriate for the purposes of enforcement.
- If there is some uncertainty as to application of an existing remedy or a specific modification is needed to make the remedy more effective, specific legislative provision is desirable.

New remedy or process

A decision to create a new remedy or process may arise from one or more of the following circumstances-

- inadequacy of existing civil remedies;
- difficulties in modifying existing remedies;
- a desire to try new processes in order to reduce costs, achieve better compliance, or achieve better co-operation with industry;
- new institutions may be better able to manage matters requiring resolution under the law due to-
 - the need for specialist knowledge
 - the desirability of less formality in proceedings than is the practice of the ordinary courts
 - the desirability of different fact finding procedures or other procedures such as mediation which may not be available through the ordinary courts

New remedy or process (cont)

Guidelines for establishing a new remedy or process:

- Undertake prior consultation with persons knowledgeable in the operation of the process or remedy to ascertain the likely pitfalls;
- Consider whether the proposed process or remedy will create anomalies or inconsistencies in the operation of the law generally (ie whether the innovation is desirable in principle as well as effective in practice);
- Check whether control or other agencies with similar legislation have concerns about the implications of the proposed new remedy or process (widespread opposition to the proposal is a significant indication that the proposal is flawed or poses problems of principle).
- Policy makers should not copy provisions from other New Zealand or overseas legislation, without considering whether the precedent is workable or desirable.

Is there a need for a new time limitation?

Guidelines: The limitation period for bringing new enforcement proceedings may need to be shorter or longer than those currently applicable when:

- It is desirable that there be an end to litigation and that defendants not be exposed to stale claims:
- Litigation should be commenced while the evidence is available and fresh.
- Claimants should have a reasonable time to investigate what may be wrongful conduct, consult, and file claims. If limitation periods are too short there may be insufficient time for this, discussion or negotiations to be completed.

Cross border issues in civil remedies

Guidelines:

Where legislation creates civil rights of action and cross-border issues are likely to arise, the statutory liability regime should accommodate these cross-border issues by ensuring that existing general rules apply or by making specific provision for those issues:

- The jurisdiction of courts or tribunals – can claims be pursued against persons situated outside the country in appropriate cases?
- The possibility of claims being pursued in overseas courts (for example when a judgment obtained in New Zealand could not be enforced against the defendant residing in another country).

Part 2: Criminal Offences

- Is it necessary to create a new offence?
- Has the appropriate mental element been determined?
- Are appropriate defences available?
- Is the offence a summary or indictable offence, and is this appropriate?
- If the offence is an infringement offence?
- Have appropriate penalties been determined?
- Are there cross-border elements involved?

Is it necessary to create a new offence?

Guidelines: When considering whether to create a new criminal offence:

- Will the conduct, if permitted or allowed to continue, cause substantial harm to individual or public?
- Would public support the use of the criminal law, or is the conduct likely to be seen as trivial?
- Is the conduct best regulated by the civil law (eg, compensation, restitution)?
- Is the proposed use of the criminal law primarily for convenience rather than the conduct itself warranting criminal sanctions?
- How will enforcement be undertaken, who will be responsible for the investigation and prosecution of the offence, and what powers will be required?
- Is the conduct that is to be categorised as a criminal offence able to be defined with precision?

The appropriate mental element

Guideline for type of offence:

- There is a presumption that mens rea (the mental element) is required and the prosecution should have the onus of proving the mental element exists.
- An a strict liability offence (where there is no need for the prosecution to prove the mental element, but there is a defence of total absence of fault) if:
 - the offence involves the protection of the public from risk-creating activities;
 - the threat of criminal liability supplies a motive for persons to adopt precautions;
 - the defendant is best placed to establish absence of fault.
- There is very limited scope for the creation of new absolute liability offences in New Zealand (ie those offences where even a total absence of fault is not a defence) only if:
 - there is an overwhelming national interest;
 - there is a cogent reason in the particular circumstances for precluding a defence of total absence of fault.

Appropriate defences

Guidelines:

- If a legal burden is imposed on the defendant to establish an exception or defence, clear words like "prove" or "proved" should be used.
- In NZ, an 'evidential' burden of proof **may** be indicated by using words requiring that there must be "evidence" of some relevant qualification (eg, "in the absence of evidence to the contrary").
- Words which place a burden on the defendant to prove something generally create a "prima facie" infringement of the New Zealand Bill of Rights Act, and therefore need to be a "justified limitation" of rights.
- In general, it is preferable to avoid placing a legal burden of proof on a defendant, particularly if the case involves a "truly criminal offence".
- It is helpful to the public and the courts to identify and spell out specific defences in the case of public welfare regulatory offences.

Summary or indictable offence?

Guidelines:

- It is helpful to specify in the legislation whether a particular offence is a summary offence or an indictable offence.
- If an offence is punishable by more than 1 year's imprisonment it should generally be categorised as an indictable offence.
- If an offence is punishable by more than 1 year's imprisonment but less than 10 years imprisonment, the prosecution should be given an option of trying the offence summarily.
- In no case should an offence have retrospective effect.

Is the offence an infringement?

Guidelines:

- An infringement notice procedure is not suited for use in connection with—
- offences requiring proof of mens rea;
 - offences that are punishable by imprisonment;
 - offences that are not easy to establish.

- An infringement notice procedure is best suited for those offences that—
- are offences of strict liability that are committed in large numbers;
 - involve misconduct that is generally of comparatively minor concern;
 - involve acts or omissions that involve straightforward issues of fact.

An infringement notice procedure is generally only practicable with a dedicated enforcement team.

Appropriate penalties

Guidelines for considering the appropriate penalty for an offence:

- Imprisonment is not generally an appropriate penalty if the offence is either strict or absolute liability;
- Mandatory or minimum penalties should generally be avoided unless the offence is an infringement offence;
- It is inappropriate to increase any maximum penalty with retrospective effect;
- Some regard must be had to the level penalties for similar offences;
- Consider whether maximum set for fine allows offender to make a windfall profit;
- Standard fees for an infringement offence should be set at a low level;
- Generally, offence should be included in primary legislation. If delegated legislation is to create criminal offences, the empowering legislation should specify the maximum permissible penalties but not imprisonment.

Cross-border issues for criminal penalties

Guidelines:

- The general criminal jurisdiction rules should only be departed from in exceptional cases. Legislation should not provide for jurisdiction to prescribe or jurisdiction to adjudicate in criminal matters in respect of acts done outside the country, unless there is a clear case to do so. Any special jurisdictional rules should be consistent with the principles of international law.
- In some cases it may be appropriate to supplement the general rules in relation to cross-border assistance in criminal matters with tailored regimes for cooperation in investigation and enforcement activity. Special regimes of this kind are most appropriate in the context of cross-border regulatory arrangements with other countries.

Part 3: Appeal and Review

- Does the legislation purport to oust judicial review?
- Is provision for appeal appropriate?
- Have proper criteria for choosing the appellate body been applied?
- Has the proper procedure for making and deciding appeals been applied?

Oust judicial review?

Guidelines:

- Where provision is made for an appeal on the merits from a decision, provision delaying judicial review until the right of appeal has been exhausted may be appropriate.
- Except in the most unusual cases, legislation should not deprive people of the opportunity to seek judicial review of actions, nor limit their right to do so.

Appropriate provision for appeal

Guidelines:

- In general there should be a right of appeal against the findings of officials, tribunals and other bodies making decisions that affect important rights, interests and legitimate expectations of individuals. The greater the effect on an individual person's rights, interests or legitimate expectations, the stronger the case for providing a right of appeal.
- The relative lack of importance of the likely effects of the decision, the cost of appeal, the need for early finality, or the high quality and expertise of the primary decision-maker may indicate limiting the right of appeal, rather than denying appeal altogether.

Choosing the appellate body

Guidelines:

- In the interest of finality, appeals may be limited to specifically defined issues, usually questions of law, or questions of fact. However, care should be exercised when considering possible limits on appeal rights because:
 - it is sometimes very difficult to distinguish between the questions of law and fact; and
 - imposing limitations may in some circumstances effectively leave an individual with no right of recourse.
- The type of issues that may be considered on appeal should be determined in light of the purpose of providing the appeal, the competence of the appellate body, and the appropriate balance between finality on the one hand, and accurate fact-finding and correct interpretation of the law on the other.

Procedure for appeals

Guidelines:

Legislation providing for appeals also provide:

- An independent and impartial appellate body
- The appellate body has the same powers, duties and discretion as the person who made the decision appealed from; and may confirm, amend or cancel the decision;
- The appellate body is to adopt procedures that are consistent with natural justice;
- That the appellate body is to give written reasons for its decisions.

Compliance Appendices

Compliance Appendix 1: Section 81 Commerce Act 1986

COMMERCE ACT 1986
PART 6 - ENFORCEMENT, REMEDIES, AND APPEALS
Restrictive trade practices

81. Injunctions may be granted by Court for contravention of Part 2—
The Court may, on the application of the Commission or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following—
- (a) A contravention of any of the provisions of Part 2 of this Act;
 - (b) Any attempt to contravene such a provision;
 - (c) Aiding, abetting, counselling, or procuring any other person to contravene such a provision;
 - (d) Inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision;
 - (e) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision;
 - (f) Conspiring with any other person to contravene such a provision.



Compliance Appendix 2: Checklist for Cross-Border Issues

At an early stage in policy development, it is important to identify the nature and significance of cross-border issues. Any policy and implementing legislation should take into account the followings factors:

- Dealings across borders;
- Persons outside NZ whose conduct affects persons in NZ;
- Persons in NZ whose conduct affects persons overseas;
- Civil proceeding in NZ involving overseas parties;
- Civil proceedings in NZ concerning dealings governed by foreign law;
- Civil proceedings overseas raising issues of NZ law;
- Information or evidence overseas required for the purpose of detection and investigation of breaches, and enforcement action;
- Whether NZ determinations or NZ law obligations will be recognised or enforced overseas, and vice versa;
- Whether cooperation with other States is needed to give effect to the policy;
- Whether there are applicable treaties, or other international obligations.



Overview of Packaging Requirements

- Codex: General Standard for the Labelling of Prepackaged Foods
- OIML R79: Labelling requirements for prepackaged products.
- OIML R 87: Quantity of products in prepackages

CODEX GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS

- Definition of Terms
 - “Date of Packaging” means the date on which the food is placed in the immediate container in which it will be sold.
 - “label” means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on or attached to a container of foods.

CODEX GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS

- Definition of Terms
 - “Lot” means a definitive quantity of a commodity produced essentially under the same conditions.
 - “Prepackaged” means packaged or made up in advance in a container, ready for offer to the consumer, or for catering purposes.

CODEX GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS

- Mandatory Labelling of Prepackaged Food
 - Name of the food
 - List of ingredients
 - Name and address of manufacturer, packer, distributor, importer etc.
 - Net contents and drained weight
 - Lot identification
 - Date marking and storage instructions

CODEX GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS

- Presentation of Mandatory Information
 - 8.1.2 Statements required to appear on the label by nature of this standard or any other Codex standard shall be clear, prominent, indelible and readily legible by the consumer under normal conditions of purchase and use.

CODEX GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS

- Presentation of Mandatory Information
 - 8.1.4 The name and net contents of the food shall appear in a prominent position and in the same field of vision.

OIML R79 LABELLING REQUIREMENTS FOR PREPACKAGED PRODUCTS

- Scope
 - the identity of the product
 - the name and place of business of the manufacturer, packer, distributor, importer or retailer
 - the net quantity of the product
- It does not cover catchweight goods (variable weight)

OIML R79 LABELLING REQUIREMENTS FOR PREPACKAGED PRODUCTS

- Terminology
 - “Prepackaged product” any commodity that is enclosed in a container or wrapper in any manner, and for which its quantity has been determined and indicated on its label prior to being offered for sale.
 - “Net quantity” the quantity of the identified product in the package exclusive of wrappers and any other material packed with such a product.

OIML R79 LABELLING REQUIREMENTS FOR PREPACKAGED PRODUCTS

- Terminology
 - “Label” any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed or moulded into, embossed on, or giving any information with respect to the product for purpose of branding, identifying, or giving any information with respect to the product or to the contents of the package.

OIML R79 LABELLING REQUIREMENTS FOR PREPACKAGED PRODUCTS

- Terminology
 - “Principal display panel”
 - The part of a package that is most likely to be displayed, presented shown or examined under normal and customary conditions of display.

OIML R79 LABELLING REQUIREMENTS FOR PREPACKAGED PRODUCTS

- The net quantity shall be expressed in terms of the largest whole unit of mass, volume, length, area or a combination of these units.
- Statements of net quantity shall be appear in easily legible boldface type or print that contrasts conspicuously with the background and with other information on a package.

OIML R79 LABELLING REQUIREMENTS FOR PREPACKAGED PRODUCTS

- A consensus was not achieved on a minimum type size for the lettering required for labelling prepackaged products. Annex B gives the current requirements in the USA and in the EU as examples only.
- As regulators how will you address this?

OIML R 87 QUANTITY OF PRODUCTS IN PREPACKAGES

- Scope
 - Legal metrology requirements for prepackaged products labelled in predetermined constant nominal quantities of weight, volume, linear measure, area and count.
 - Sampling plans and procedures for use by legal metrology officials in verifying the quantity of product in prepackages.

OIML R 87 QUANTITY OF PRODUCTS IN PREPACKAGES

- Terminology
 - “Prepackaged product” a single item for presentation as such to a consumer, consisting of a product and the packing material into which it was put before being offered for sale and the quantity of product has a predetermined value, whether the packing material encloses the product completely or only partially, but in any case in such a way that the actual quantity of product cannot be altered without the packing material either being opened or undergoing a perceptible modification.

OIML R 87 QUANTITY OF PRODUCTS IN PREPACKAGES

- Terminology
 - “Inspection lot” a definite quantity of some prepackages produced at one time under conditions that are presumed uniform and from which a sample is drawn and inspected to determine conformance with specified criteria for acceptance or rejection of the inspection lot as a whole.

What is Average Quantity System AQS? Analysis of R87

- AQS is an internationally recognised system for determining deficiencies in packages sold by quantity.
- It uses statistical sampling methods to provide both businesses and consumers with a far greater confidence that packaged goods they sell and buy contain the stated amount.

OIML R 87

- Final Draft accepted October 2003 and printed August 2004.
- It is used as the basis for Average Quantity Systems legislation in;
 - European Union Canada
 - Japan Mexico
 - New Zealand India
 - South Africa

OIML R 87

- USA
 - Similar system broadly compatible with AQS
- Australia
 - Consultation process expects to adopt AQS in the near future still uses the minimum quantity system

AQS Terminology

- prepackaged product
- inspection lot
- tolerable deficiency
- 'weighted' average
- inadequate package
- desiccating goods
- catchweight goods

Limits Of R87 Coverage

- Covers prepackages from 0 to 50 kg for mass and 0 to 50 L for volume.
- No maximum limit on length, area or number.
- It does not cover inspection lots less than 100.

The Three Rules of AQS

Rule 1

The average actual quantity of product in prepackages in an inspection lot shall be at least equal to the nominal quantity

The Three Rules of AQS

Rule 2

Not more than 2.5% of all the packages in a lot may contain a quantity of product less than the nominal quantity, by more than a tolerable deficiency ($T1$) ($Q_n - T$)

The Three Rules of AQS

Rule 3

An inspection lot must not contain one or more inadequate prepackages that contains a quantity of product less than $Q_n - T2$ (called a T2 error)

Tests for Metrological Requirements

- Officials shall conduct tests to determine if prepackages comply with the requirements of;
- R87 “Quantity of product in prepackages” and R79 “Labelling Requirements for Prepackaged Products”.
- The test may be at any level of distribution i.e. import, wholesale or retail.

Tests for Metrological Requirements

The uncertainty associated with the measuring instruments and test methods for determining the quantities shall not exceed 0.2T at 95% confidence level.

Tests for Metrological Requirements

- Legal metrology officials may conduct any other test at any level of distribution to verify that prepackages meet the requirements of R87 or other recommendations or laws.
- Officials may permit reasonable deviations in the quantity of product caused by ordinary and customary exposure to environmental conditions. (i.e. hygroscopic products)

Characteristics of a Sampling Plan used by Officials

- Inspection lots are assumed to be homogeneous (the same kind, uniform) if there is no indication to the contrary.
- Samples shall be selected randomly.
- Inspections are carried out on the premises of the packer (although this is the usual practice inspections can be carried out anywhere).
- If carried out elsewhere, what is a lot?


Characteristics of a Sampling Plan used by Officials

- An inspection lot taken from the production line shall consist of all prepackages not rejected by a checking system.
- Sample prepackages must be collected **AFTER** the point of final checking by the packer. (Once removed from the production line and is stored ready for dispatch for sale, it is “in possession for sale” and therefore must comply with the legislative regime.)



Sampling Plans

- These can usually be stated in policy documents and are not necessary in regulation. (Is this the practice in your country?)
- Collected from the production line:** the inspection lot shall be equal to the maximum hourly output of the production line without any restrictions as to the inspection lot size.



Sampling Plans

- **Not collected from the production line** at the premises of the packer, and when:
 - If production exceeds 10 000 prepackages per hour the lot shall equal the maximum hourly output with any restriction as to the lot size, or
 - If production output is < 10 000 prepackages per hour, the lot size shall not exceed 10 000 prepackages.




Table 1 Sampling Plans for Prepackages

Column 1	Column 2	Column 3	Column 4
Inspection lot size	Sample size (n)	Sample Correction size	Number of prepackages in a sample allowed to exceed the tolerable deficiencies
100 to 500	50	0.379	3
501 to 3 200	80	0.295	5
more than 3200	125	0.234	7




Table 2 Tolerable Deficiencies
Mass & Volume

Amounts of error for packages labelled by mass or volume

Column 1 Stated quantity (g or ml or cm ³)	Column 2 Amount of error (% of stated quantity)	Column 3 Amount of error (g or ml or cm ³)
0 to 50	9	—
50 to 100	—	4.5
100 to 200	4.5	—
200 to 300	—	9
300 to 500	3	—
500 to 1 000	—	15
1 000 to 10 000	1.5	—
10 000 to 15 000	—	150
15 000 to 50 000	1	—

Table 2 Tolerable Deficiencies
Length, Width & Area

Amounts of error for packages labelled by reference to length, width,
area, or number

Column 1 Quantity type	Column 2 Amount of error
Length or width	2% of stated length or width for all packages
Area	3% of stated area for all packages
Number	For packages stated to contain 50 or less goods, No deficiency allowed. For packages stated to contain more than 50 goods, 1% of the number of stated goods rounded up to the nearest whole number

Significance level of the tests for Type I Risk

For the average quantity of the product in the
prepackage.

$$\alpha_{\mu} \leq 0.5\% \text{ for } \mu = Q_n$$

That is, the probability of rejecting a
correctly filled inspection lot with $\mu=Q_n$
shall not exceed 0.5 percent.

Significance level of the tests for Type I Risk

For the percentage of inadequate prepackages
the significance level.

$$\alpha_p \leq 5\% \text{ for } p = 2.5\%$$

That is, the probability of rejecting an
inspection lot containing 2.5 percent of
inadequate prepackages shall not exceed
5 percent.

Significance level of the tests for Type II Risk

In at least 90% of the cases, the tests shall detect inspection lots:

- for which the average fill is less than $(Q_n - 0.74\sigma)$ where σ is the sample standard deviation of the quantity of product in the prepackages of the inspection lot, and
- lots that contain 9% inadequate prepackages.

Annex E Prohibition of misleading prepackages (Mandatory)

- (E1) A prepackage shall not have a false bottom, sidewalls, lid or covering, nor be constructed of filled wholly or partially, in such a way to deceive.

Annex E Prohibition of misleading prepackages (Mandatory)

- (E2) Slack fill is the difference between the actual capacity of the packing material and the volume of product it contains. Slack fill may be necessary for the following reasons:

Annex E Prohibition of misleading prepackages (Mandatory)

- Protection of the product
- The requirement of the packaging machine
- Unavoidable settling during shipping and handling
- The need of the prepackage to perform a specific function

Annex E
Prohibition of misleading prepackages
(Mandatory)

- Non-functional slack is the empty space in a prepackage when the package is filled to less than its capacity
- A prepackage with excessive non-functional slack fill is considered to be a misleading one.

Annex E
Prohibition of misleading prepackages
(Mandatory)

- R87 is silent on what % of slack fill is misleading.
- It is subjective and related to the circumstances of each package.
- Some countries have guidelines, and precedent setting legal opinions.

Annex E
Prohibition of misleading prepackages
(Mandatory)

- Aerosol dispensers have specific guidelines as required by;
- European Directive 80/232/EEC
- Also see OIML R79 6.1 - 6.3

Annex A
Outline of examination procedure
(Informative)

- This annex may be used to develop test procedures for checking the quantity of product in prepackages.
- Usually these procedures are NOT included in legislation, rather in policies or procedures that are used by metrology authorities.

Annex B Tare procedures (Informative)

- This annex may be used to develop test procedures for determining the tare weight of a prepackage.
- It sets limits when the average tare weight (ATW) can be used and when it can not.
- Usually not in legislation, rather, in procedures.

Annex C Drained quantity of products packed in a liquid medium (Informative)

- This annex states procedures to determine the drained quantity of product in a liquid medium.
- The liquid medium (the brine or preservative) is meant to be left over after use.
- “Content of the prepackage” applies to the remaining solid product.

Annex C Drained quantity of products packed in a liquid medium (Informative)

- A liquid medium that is used or consumed (fruit juice with pulp) is not meant to be left over.
- Therefore the “content of the prepackage” applies to the solid and the liquid medium.
- The annex does not apply to these products.

Annex C Drained quantity of products packed in a liquid medium (Informative)

- Where it is unclear whether the liquid medium might or might not be left over the definition of packing material does not distinguish between the liquid medium and the solids.

Annex C

Drained quantity of products packed
in a liquid medium
(Informative)

- Note: The CODEX “General standard for the labelling of prepackaged foods” requires;
- 4.3.3 *Net contents and drained weight* that “a food packed in a liquid medium shall carry a declaration... of the drained weight of the food”.

Annex D

Test procedures for determining the
actual quantity of frozen products
(Informative)

- The annex covers requirements for thawing;
 - Frozen fruits and vegetables
 - Glazed seafood
 - Frozen shrimp and crabmeat
- States procedures, equipment and specifications.

Short Quantity Offences General Provisions

- When drafting legislation about prepackaged goods. Some consideration has to be given to non-prepackaged goods
- Why?
- So that a consistent approach is given to goods whether they are enclosed in a package or loose or unwrapped.
- To ensure the person making the measurement statement is held accountable whether seller or buyer.

Short Quantity Offences

- An example of of this is;
Section 16 (1) NZ W&M Act
- Every person commits an offence who, in selling any goods by weight, measure, or number, delivers or causes to be delivered to the purchaser a lesser quantity than corresponds with the price charged.

Short Quantity Offences

- An example of of this is;
Section 16 (2) NZ W&M Act
- Every person commits an offence who, in purporting to sell any goods by weight, measure or number, delivers or causes to be delivered to the purchaser a lesser quantity than that purported to be sold.

Short Quantity Offences

- This section is central to the administration of New Zealand law on the supply of short quantity goods.
- It applies to the generality of goods, sold wholesale or retail.
- It prohibits selling a lesser quantity than purported or than corresponds with the price charged.

Short Quantity Offences

- Because another section (16A) applies to prepackaged goods it is often thought that this section applies to non prepackaged goods or goods weighed, measured or counted at the time of sale.
- However it applies quite generally.

Short Quantity Offences

- Ensure that your legislation has the obligation to sell goods by net weight or measure.
- i.e. All goods sold or offered or exposed for sale by weight or measure by a person shall be sold or offered or exposed for sale by net weight or measure.

Short Quantity Offences

- OIML R 87 deals with the inspection of lots of prepackaged goods above 100.
- What tolerances will you use for lots less than 100?

Short Quantity Offences

- Some countries use the minimum quality system that has a fixed tolerance.
- Example
- 5% tolerance. No individual package may have a deficiency great than 5%.
 - If it does it is an offence.

Short Quantity Offences

- Goods are allowed to be up to 5% deficiency if the average quantity of all the goods is at least equal to the nominal quantity.
- What % would be considered appropriate?

Short Quantity Offences

- New Zealand developed a sample plan for lots less than 100.
- What method best suits your countries needs?

Short Quantity Offences

- Goods that are not prepackaged do not have a tolerance other than the mpe of the weighing instrument used to weigh them.

Short Quantity Offences

- Offence for the purchaser to state incorrect, weight, measure, or number.
- Applies when the purchaser weighs or measures the goods being sold.

Short Quantity Offences

- Every person commits an offence who, in the course of that person's business, purchases any goods by weight or measure or number where the weight or measure or number of those goods-
 - Is determined by that person and not by the seller of those goods for the purposes of the purchaser; and
 - Is not the true weight or measure or the correct number of those goods.

Offence to supply short weight,
measure or number
NZ W&M Act Section 16

1 Every person commits an offence who, in selling any goods by weight, measure, or number, delivers or causes to be delivered to the purchaser a lesser quantity than corresponds with the price charged.

Offence to supply short weight,
measure or number
Section 16

2 Every person commits an offence who in purporting to sell any goods by weight, measure or number, delivers or causes to be delivered to the purchaser a lesser quantity than that purported to be sold.

Offence to supply short weight,
measure or number
Section 16A

- Offence to supply weight, measure, or number not in accordance with stated quantity
- 1) The following definitions apply in this section

Offence to supply short weight,
measure or number
Section 16A

- (a) in subsection (2) person means every person who **sells or offers or exposes for sale**, or **has in that person's possession for sale**, by weight, measure, or number, any goods enclosed in a package that states the quantity of the goods or that has a label attached to it stating the quantity of the goods.

Offence to supply short weight,
measure or number
Section 16A

- (b) in subsection (2) **goods** includes catch weight goods:
- (c) in subsection (3) **goods** does not include catch weight goods.

Offence to supply short weight,
measure or number
Section 16A

- (2) Every person commits an offence if the weight, measure, or number of the goods in the package is less than that stated on the package or label

Offence to supply short weight,
measure or number
Section 16A

- (3) However, the weight, measure, or number of the goods in the package is deemed to be the same as that stated on the package or label if-
- (a) the package meets the conditions prescribed for AQS packages; or
 - (b) the package is 1 package in a lot of packages that meets the conditions prescribed for AQS packages.

Offence to supply short weight,
measure or number

- **Every person**both natural and legal entity.
- **Commits an offence**...clearly defines that the matter is an offence.
- **In selling any goods**.... “goods” means all kinds of moveable personal property including animals.
- **Offering or exposing for sale**.... Means on display or advertised or on a shelf ready for sale.

Offence to supply short weight, measure or number

- **In possession for sale**means in storage or a warehouse, once the final inspection has been made.
- **By weight, measure, or number**...covers the options of measurement.

Offence to supply short weight, measure or number

- **Delivers or causes to be delivered**... this covers those responsible for delivery or supply i.e. the company that sells the goods.
- **A lesser quantity than corresponds to the price charged**... relates to when the quantity is not stated but inferred.

Desiccating goods

- Desiccating goods are goods made up in a package that lose weight or volume solely through evaporation after the package is made up.
- Not to be confused with hygroscopic goods that both hydrate and dehydrate with climatic conditions.

Desiccating goods

- A person has a defence in respect of a package from a lot of packages containing desiccating goods if that person can prove that, at any time on the day the package was made up or during a period of 7 days after the day the package was made up,-

Desiccating goods 7 day rule

- The weighted average quantity was in accordance with R87.
- The number of packages with a tolerable deficiency was equal to or less than the appropriate number specified in R87; and
- There were no inadequate packages in any sample taken from the lot.

Desiccating goods 7 day rule

- This defence allows that pre-packaged goods must be within the three rules of AQS for 7 days after the day of packing.
- After the seventh day only the last rule applies, that no inadequate packages are contained in the sample.
- Therefore the weighted average can be less than the stated quantity and the number of packages with a tolerable deficiency may exceed the allowed amount.

Desiccating goods 7 day rule

- The burden of proof lies with the defendant to prove that the goods were desiccating and they complied within 7 days after packing.
- The enforcement agency does not have to prove that the goods were not desiccating or did not comply with the 7 day rule.

Powers of Inspection

- Needed so staff can undertake their activities with the protection of the law. It means that staff can also gather evidence admissible in court as they have a legal right to undertake inspections.
- Allows them to enter premises or buildings.
- Stop vehicles.
- Require that goods (and weighing and measuring instruments) held in possession for sale are made available for inspection.

Powers of Inspection

- Examine, weigh, measure, or count, any goods kept or exposed for sale.
- Require the production of any book, record, contract, invoice or other document relating to any goods offered for sale or W&M instruments used for trade.
- These powers must be exercised at a reasonable time.

Liability of Principals for the acts of Agents

- Where an offence is committed by any person acting as the agent or employee of another person, that other person, without prejudice to the liability of the first person, shall be liable in the same manner and to the same extent as if that other person had personally committed the offence.

Liability of Principals for the acts of Agents

- This ensures that the company is responsible for the actions of its staff.
- Individual staff can still have action against taken them if they did not follow company guidelines.
- The company must provide proper training and instruction to staff.
- This prevents management avoiding responsibility by blaming staff.

Infringement Offence Notices ION

- A low cost, simple way of punishing minor offending without, in most cases, recourse to the courts.
- They prevent minor matters reaching court and save time and money for the offender and the court system.
- The avoidance of a criminal conviction reduces the stigma to offenders.

Infringement Offence Notices ION

- They are a way of altering the behaviour of society as a whole, with a view to increasing compliance, rather than address individual criminal behaviour.
- They are for strict liability offences (short weight goods etc) and dispense with mens rea (a guilty mind)

Infringement Offence Notices ION

- Key Aspects:
- A person is served with an ION and must pay a prescribed fee within a certain time. (\$200 with 28 days)
- A reminder is sent if not paid.
- If the ION is still not paid the matter is referred to the courts for collection and action.

Offences Drafting

- Be specific.
- Avoid sweeping provisions such as “it is an offence to breach any provision of this Act”.
- Do not create offences for provisions that cannot by their nature be violated, definitions, administrative provisions or saving clauses etc.

Penalties

- A penalty is intended to deter as well as punish.
- They do not always have to be financial.
- What discomfort inflicted by the law has the greatest potential to ensure compliance?
- Naming and shaming?
- Restitution?
- Civil action?

Penalties

- Link penalties to offences.
- If the bill contains different penalties, they should be in separate subsections of the penalty section.
- State the maximum penalty.
- Enforceable court actions.
- Forfeitures.

Forfeitures

- Where any person is convicted of an offence against this Act or any regulations made under this Act, the convicting Court may, in addition to, or instead of, imposing any other sentence or making any other order, order that any weight, measure, weighing or measuring instrument, or goods in respect of which the offence was committed shall be forfeited to the Crown.

Developing Relevant Defences

- Statutory Defences
- Desiccating goods defence that states pre-packaged goods must be within the three rules of AQS for 7 days after the day of packing.
- The offence provisions are general in nature about supplying short weight or measure. The defence is specific in regard to the criteria.

Developing Relevant Defences

- Liability of Principles for the acts of Agents
- Where an offence is committed by any person acting as the agent or employee of another person, that other person, without prejudice to the liability of the first person, shall be liable in the same manner and to the same extent as if that other person had personally committed the offence.

Developing Relevant Defences

- Defence from liability of principles for the acts of agents.
- Notwithstanding anything in the previous slide, it shall be a good defence to the charge if the defendant's proves that the offence was committed without the defendant's knowledge and that the defendant took reasonable precautions and exercised due diligence to prevent the commission of the offence.

Developing Relevant Defences

- Reasonable Precautions and Due Diligence
- The standard is on the balance of probabilities and is to ensure no person shall be criminally liable for something which they can not reasonably avoid.

Developing Relevant Defences

- Reasonable Precautions.
- It is question of fact not one of law.
- The taking of precautions may include;
- Proper staff training.
- An efficient system of checking packages (sampling plans).
- The proper operation of the system.

Developing Relevant Defences

- Due Diligence
- An effective procedure for checking that the system is being complied with.
- This checking must be carried out diligently.
- Oral enquires from time to time would not be sufficient.

Developing Relevant Defences TTMRA

- The Trans-Tasman mutual recognition principle in relation to goods is that, subject to this Act, goods produced in or imported into an Australian jurisdiction, that may be lawfully sold in the Australian jurisdiction either generally or in particular circumstances may, by virtue of this Act, be sold in New Zealand either generally or in particular circumstances (as the case may be), without the necessity for compliance with any of the requirements relating to sale that are imposed by or under the law of New Zealand and are described in subsection 2.

Developing Relevant Defences TTMRA

- (2) The requirements referred to in subsection (1) are the following:
 - (a) A requirement that the goods satisfy standards relating to their composition, performance, production, or quality, or relating to any other aspect of the goods themselves; or
 - (b) A requirement that the goods satisfy standards relating to their age, date stamping, labelling, or packaging, or relating to any other aspect of the way the goods are presented; or

Developing Relevant Defences TTMRA

- (c) A requirement that the goods be inspected, passed, or similarly dealt with in or for the purposes of New Zealand; or
- (d) A requirement that any step in the production of the goods not occur outside New Zealand; or
- (e) Any other requirement relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the goods in New Zealand.

Developing Relevant Defences TTMRA

- Therefore goods that can legally be sold in Australia can also legally be sold in New Zealand.
- This applies even when the labelling or tolerances permitted are different between the nations.
- Therefore the defence is to prove it was from Australia and it complied with local requirements.

Seminar on the OIML Recommendation R87
From 28th – 30th, July 2004 in Kuala Lumpur, Malaysia

Presented by Mr. Hou Leng
Deputy Director of Department of Metrology, Cambodia

General condition of Metrology in Cambodia

The department of Metrology was established since the year of 1999. The only legislation related to that subject in Cambodia, is sub-degree #35 AK/PK dated on April 26th, 1999 defining the organization and functioning of the Ministry of Industry Mines and Energy (MIME). This sub-degree is quite inadequate for the full enforcement of legal metrology's requirement. Therefore with the assistance from UNIDO, a new law was completely drafted and submitted to the MIME for the consultation and consideration.

This law is expected to define the use of legal unit of measurement, as well as give a wider variety of options to the department of metrology, namely, its enforcement procedures, inspection of goods and training protocols.

The inadequate professional training of the staff belonging to metrology, lack of manpower and non proper equipments required for product-testing, are the main reasons why we can barely perform our originally intended tasks. Testing of prepackaged goods, would be only possible with the adequate measuring instruments, placed at the factory sites, which Cambodia does not currently have.

1- With regards to the measuring instrument not being used

Basic food stuffs such as rice, fruits, vegetables, meat and fish are usually bought by industrial and private consumers alike, on small local public markets. The merchandise is always sold without being properly scaled and mostly, spring balances from Vietnam or Thailand manufacturing are being used for the transactions. The scales, whose maximum capacity lies between 10kg and 30kg, are somewhat comparable with OIML Recommendation, but not precise enough. We still have bulk products such as rice, practically always sold only by the volume. The volume measures used being metal or plastic can or the bags being filled and accepted by eye-judgment.

2- The inadequate availability of staff

In Cambodia we have one department of metrology and 24 provincial offices of metrology. Their responsibility doesn't extend to import prepackaged goods. We have not enough qualified staff to meet the ASIAN requirements. However, Cambodia is receiving assistance:

- UNIDO project:

The objective of the UNIDO project are to support the institutional development in Cambodia to facilitate the export of manufactured products.

- New law have been drafted with technical assistance from UNIDO
- The metrology equipment value at USD 265,000 in the field of mass, volume and has been provided .
- The staff has been training locally and will train abroad.
- A building belong to department of metrology has been upgraded to house the new equipment.

- The construction of the new building for testing laboratory has been started on June 2004 and will be finished within 5 months.

- PTB assistance:

Within the framework of the German project of technical cooperation, the department of metrology has signed agreement on the further common activities with PTB in Phnom Penh on September 18th, 2002. PTB has agreed to provide the metrology equipments and training mainly in the area of mass and volume. Until now we have not receive this equipments yet.

- The dimensional equipment from Mitsutoyo Co. Ltd. Singapore:

The dimensional measuring equipment and training valued at USD140,000 from Mitsutoyo has been donated to the department of metrology. it is expected this dimensional laboratory of their instruments will be utilized by Cambodian companies in the near future. The draft for the national regulation of the dimensional measurement will be formulated with technical assistance from UNIDO.

- New Zealand Aid:

New Zealand government has approved to fund the technical assistance and training recommendation in the report of the CLMV legal metrology needs assessment conducted by Mr. Terry Collins and Mr. Brian Waltham from Ministry of Consumers Affairs, NZ. The focus of assessment was the establishment of regional verification center and is intended to compliment the work that already conducted by UNIDO at the national level.

In conclusion:

With the regards to the ASEAN common requirement of pre-packaged goods, we have been working together through the ACCSQ working group on legal metrology in the past 2 years. As a result of collaborations, we finalized the ASEAN common requirement of prepackaged goods during the 2nd workshop on harmonization of requirements of pre-packaged goods on February 16-18, 2004 in Bangkok.

As the result of feed back from this seminar, we invited all the private sectors and the department concerned to a discussion about this topic. The long day discussion took place in MIME. All parties agreed to follow the ASEAN requirement and the Ministry level official expressed her high appreciation for the hard work of ACCSQ WGLM members and recommended to the private sectors and the others departments concerned to take notice and to be guided by these requirements.

Although the attainment of goals is slow, we are optimistic about the future with the UNIDO, PTB, NZAID assistance and the other agencies participation and we expect that Cambodia will become a viable participant in the ASEAN community.

Weight and Measures in Hong Kong

Dr. CHUI Kuk-ying

Government Laboratory

Hong Kong, China

Weight and Measure Ordinance

- ☞ Weighing or Measuring Equipment used for Trade
- ☞ Regulation of Trade Transactions
 - > Goods to be supplied by net weight or measure
 - False statements as to quantity of goods supplied
 - > Weighing or measuring of goods sold
 - Short weight or measure



Goods to be supplied by net weight or measure

- ☞ No person shall in the course of trade supply any pre-packed goods by weight or measure unless the net weight or measure of the goods in an authorized unit is legibly marked upon the outside of the container, or upon a label firmly attached thereto.



Goods to be supplied by net weight or measure

- ☞ No person shall in the course of trade supply, or cause to be supplied, to another person any goods by weight, measure of number short of the quantity purporting to be supplied or less than that which corresponds to the price charged for those goods



Role of Government Laboratory

Provide unbiased analytical service in

- ☞ determining net weights or net volume of pre-packed goods
- ☞ checking the performance of weighting or measuring equipment used for trade

Relation with OIML R87

- ☞ In determining acceptable individual deficiencies
- ☞ During investigations of short measure complaints from the public

Thank You

JUST FOR TOUR

Legislation for prepackages in China

The law on metrology of the people's republic of China was adopted in 1985 and implemented from July 1, 1986. In order to strengthen metrological supervision and management of the pre-packaged goods, the metrological administrative department of the State Council work out "Regulation for supervising and managing metrological work for the pre-packaged goods" in 1995. The OIML R87 "Net content in packages" of 1989 was mostly adopted in this regulation. During the past 9 years, this regulation took an important function on protecting the interests of the consumer and developing the production.

But, with the development of the market economy in China, we need to modify this regulation for prepackags. There are some demands for this. First, the pre-packaged goods became the primary commodity, the consumers request higher metrological requirements for prepackages. Second, the supervision and management for the prepackages is not enough. Third, the old regulation for the prepackages of China can not meet all the needs for prepackages, it should be more scientific and reasonable. Last, the new OIML R87 "Quantity of products in prepackages" which promulgated in 2004 took an important change on the metrological requirements and inspection and so on. We should modify the old regulation of China to meet the OIML R87.

After some investigate and consultation for prepackags on the enterprises and consumers, the new regulation(draft) for prepackages of China named "Measures for supervising and managing metrological work for the prepackages" was formed in 2003. The regulation(draft) was discussed at the meeting held in Jiangxi Province in April, 2004. In response to those comments, a new edition of the regulation was prepared and discussed at the latest meeting held in July, 2004. The final edition of this regulation for prepackages in China will be formed and adopted in the autumn of 2004. Moreover, in China, a new technology rulebook for the measurement standards on the inspection for prepackages will be modified this year to meet the new regulation for prepackages.

But there are still some problems for us on to implement the revised OIML recommendation R87. Here is some questions.

- (1) What is the difference between **net content** and **quantity**? Why the name of R87 changed from "Net content in packages" to "Quantity of products in prepackages".
- (2) What is the difference between **commodity** and **product** ? Is it right that **product** using in the factory and **commodity** using in the market?
- (3) In the Table 1 of R87, there is no regulation about the inspection lot size **1 to 100**. For the prepackages which has 1 to 100 inspection lot size, how to sampling? How to estimate?
- (4) In the Table 2 of R87, Some tolerable deficiency use percent of **Qn**, and the other use **g or ml**. Why? What is the difference?
- (5) The prohibitions against misleading prepackages is very important. We would appreciated if we can get more information and good experiences on the policy and the technology regulation about the prohibitions against misleading prepackages.

Meina Zhu, P.R China

Requirements and Problem implementation of Pre-packaged goods in Indonesia

Workshop on Common of Requirements for Pre-packaged goods

Kuala Lumpur -Malaysia
28-30 Juli 2004

Legal metrology in Indonesia:

- Directorate of Metrology - Directorate General of Domestic Trade - Ministry of Industry and Trade → responsible authority for conducting the legal metrology implementation.
- Vision→ to ensure good measurement in all fields purpose to maintain the public protection through the correctness of the measuring instruments in order to increase the competitiveness of domestic products in global market.
- Vision→ to develop and to improve the legal metrology system through common of measurement units, measurement standards and method of measurement whether domestically or internationally

Metrological regulations in Indonesia:

- The Law No. 2, 1981 on Legal Metrology, related government decrees (some of which are presidential decrees) and ministerial decrees, supports the metrology system in Indonesia.
- The Indonesian law of legal metrology is outlined :
General provision, Measurement units, Measurement standards, Measuring instruments, Inspection mark, Packed commodities, Violation of the law, Punishment, Supervision and investigation, and Interim measures

Legal metrology implementation:

- Since 2000, Indonesian's government administration system had been changed from centralized into decentralized → affects legal metrology implementation.
It has been issued a decree concerning role of Central Legal Metrology and Provincial Legal Metrology.
- Directorate of Metrology (DOM) is a government institution under The Directorate General of Domestic Trade – Ministry of Industry and Trade responsible for central legal metrology activities.
- Provincial governments establish local institution of legal metrology (LOM) to carry out legal metrology activities in province.

Pre-packaged goods requirement in Indonesia:

Regulations:

- Law No.2, 1981 concerning Legal Metrology
- Decree of Ministry and Trade No.61/MPP/Kep/XI/1998 concerning Metrological Management
- Decree of Director General of Domestic Trade No.31/DJPDN/IX/99 concerning Guidance of Supervision of Pre-packaged good.

In Law No.2, 1981:

- All of the pre-packaged goods distributed or sold or shown to the public shall declare on the package or on the label simply, correctly and clearly the information concerning:
 - name of the product;
 - Its measure, net content or net weight in the packages, using international system of unit and symbol;
 - number of product in the packages when it is sold in-count.
- On every packages or labels shall bear the name and the place of the manufacture.
- It is prohibited to produce, to distribute, to pack, or to keep for sale, to offer for sale all pre-packaged goods that the actual quantity, net content or net weight or number:
 - is less than the quantity on the packages or labels;
 - not conform to article 22 of this law.

Implementation of pre-packaged goods in Indonesia:

- Started since the Law No. 2 concerning Legal Metrology enacted in 1981.
- In 1981 → the supervision of labeling.
- in 1991 → the supervision of labeling and the quantity → using the average method.
- In 1998 → supervision of the system of labeling and quantity → using sampling random method → as one of the application gained from the Workshop on Checking the Net Content in Packages that held in Munich Germany in 1996.
- The activity of supervision and checking to the quantity → performed at least 1 time per year → conducted in packaging manufacture
- Types of product: food and drink, construction material, cosmetic, medicine, LPG, lubricant, etc.

Problems:

- The requirements of tolerable limit for medicines is not specified → possible to unprotect the healthy and safety of human → it might result a bad effect or even fatal effect.
- The weight of LPG's bottles → has significant differences (approximately 1 kg) → the calculation method in determining the average of the net content of LPG could not be applied.
- For the products sold not in packages, but the prize determination based on one unity of measurement, i.e. concrete steel. We would like to have more information from other countries for handling this case.

Current Situation about Implementation of OIML Recommendation R87 in Japan

From the Survey Results on Harmonization with R79 and R87 (2003)
Tsuyoshi Matsumoto, NMIJ/AIST, Japan

1. Understanding about **R87** and that it is being **re-drafted**
Fully understood
2. **Implementation** of R87
R87 implemented with **local variation**. It is implemented by **local measurement-related governments**, based on the guidelines issued by the Measurement Administration Council.
3. Marking on **solid foodstuffs** packed in a liquid with a statement of the drained net mass
It is **not mandatory** according to the Measurement Law of Japan. It is complemented with **other statutes** such as the law concerning standardization and labeling of agricultural and forest products, so-called “**Japanese Agricultural Standards (JAS) Law**.”
4. Legislative or technical procedures for determining the **drained net mass** of sold foodstuffs packed in a liquid medium
Not exist.
5. Legislative **requirements** that prohibit the sale of **frozen** fruits and seafood at less than 100% net drained mass
Not exist.
6. Legislative or technical **procedures** for determining the **net drained mass of frozen** fruits and sea foods
It is not specified in the Measurement Law of Japan. However, so-called “**Industrial Standards**”, which are established by industries such as Japan Frozen Food Association or Japan Frozen Foods Inspection Corporation, are used.
7. Legislative requirements controlling the **moisture allowances** on pre-packaged products?
It is not specified in the Measurement Law of Japan. However, for the products of high moisture loss value, **local measurement-related governments** are giving a **handling-instruction** at the time of on-site inspection.
8. Legislative or other processes for requiring products to be **sold at reference temperatures**
It is not specified in the Measurement Law of Japan. In other laws, such as **Food Sanitation Law of Japan**, there are regulations concerning the preservation temperature etc.
9. Legislative requirements or other processes that **prohibit misleading** pre-packages
Not exist.
10. Requirements on pre-packages to be made up in **quantities prescribed by regulation**
Not exist. However, for the products of high moisture loss value, **local measurement-related governments** are giving a **handling-instruction** at the time of on-site inspection.
11. Legislative requirements for **unit price marking** on packages or at point of sale
It is not specified in the Measurement Law of Japan. However, **local governments** specify it as the Unit-Pricing System.

**“ APLMF Training courses on Developing Legislation
For the implementation of OIML Recommendation R87
July 28 – 30, 2004 in Kuala Lumpur, Malaysia “**

Country Report on Prepackages Good Activities in Lao PDR

**Presented: By Mr. Sisomphet NHOYBOUAKONG,
Department of Intellectual Property, Standardization and
Metrology(DISM),
Science, Technology and Environment Agency(STEA).**

Chairman.

Distinguished Ladies and Gentlemen,

On behalf of the representatives from Lao PDR I'm very Pleased to be here with you to present some information on the activities for the Metrology Management in Lao PDR

I would like to express my sincere thank to the NMIJ , New Zealand government (NZ Aids) and ASEAN Secretariat for assisting and providing us the opportunity to participate the APLMF Training on OIML R87 in Kuala Lumpur, Malaysia.

I. Basic Country Data.

The Lao People's Democratic Republic (Lao. PDR) is a land-locked and mountainous country which borders China to the north, Cambodia to the south, Vietnam to the east, Thailand to the west and Myanmar to the northwest.

Lao PDR has a total area of 232,800 square kilometers with a population of 5 million (1998),it's capital is Vientiane. The Lao PDR was established on December 2,1975.

The climate is tropical and dominated by the southwest monsoon which brings high rainfall, high humidity and high temperatures between mid-April and mid October. While over 70% of the rain falls during wet season, the climate is characterized by high inter-annual variability with relatively frequent occurrence of flooding and drought. Average temperatures ranges around 20[°]c in the mountainous areas and on the highland plateaus to 25[°]c - 27[°]c in the plain. Gross Domestic product (GDP) per capita: 380 US\$ (1997).

Trade and Current Account Balance Deficits:

While imports have been increasing with growth, exports have been subject to fluctuations caused by variations in world prices (fuel or coffee for example).Export policy is generally given more attention than import policy , although the value of import is two or three times the value of exports. Export are mainly of garments, electricity, timber, wood products, coffee, cardamom, mining output, and forestry and agriculture products. Import of food have generally declined, but imports of factory raw materials, and vehicles, agricultural equipment and machinery have increased. Raw materials make up 63% of all imports. The biggest import drain on hard currency in 1999 was fuel, costing US\$ 70 million. Vehicles, machinery, raw materials, garments, construction materials, pharmaceutical products and food followed this.

Up to now, the imported goods except drug and food are not controlled and inspected by any concerned bodies yet.

II. The Present Status And Problems on the Implementation of Prepackages goods.

▪ **Organizational Chart of DISM (see annex1).**

Department of Intellectual Property, Standardization and Metrology (DISM) under Science Technology and Environment Agency (STEA) are a National Standards Body (NSB) and a Government Body . The DISM was established in 1993 under STEA, which advises and manage the issues of intellectual property, standardization and metrology management for the whole republic.

The main priority task of DISM is to improve standards and quality awareness in all economic sectors as to:

- Prepare plans, law, rules and regulation on QSTM and submit them to the higher authorities for approval;
- Organize the supervision and central on the implementation of the approved law, rules and regulations;
- Establish organization system on QSTM and provide methodological guidance for all activities of the above system;
- Organize formulation of national standards and maintain national metrology standards;
- Provide and implement quality system and product certifications, testing and calibration, verification of metrology equipment and laboratory accreditation. Implement the supervision and inspection on quality of goods and products and measuring instrument;
- Conduct studies on QSTM;
- Improve the technical level of employees, training and cooperate with regional and international organizations in the field of QSTM management.

The local management agency (Provincial and Municipal level) has the role in activities regarding QSTM matters as well as central activities but according to the recommendation of the central management agency.

Legislation :

In order to ensure and strengthen administration of QSTM matters, Lao PDR has promulgated some necessary legislation relating to the standardization, quality and testing metrology management are the following :

- The Decree regarding the Management on Standards and Quality of products, issued by the Prime Minister in November 2nd , 1995 and,
- Decree on Metrology Management issued by the Prime Minister in October 26,1993.
- Regulation on Registration of Measuring Instruments (No 233/STEA. March 10,1994).
- Regulation on Prepackages goods (Drafted)
- Regulation on Fuel Truck Tank registration (Drafted)
- Guidelines on Registration and Testing of fuel Dispenser(February 07,2001).

However, all legislation mentioned above are relating with some activities of the management only, but still absence of the right inspection and testing system with Legal Metrology conformance .

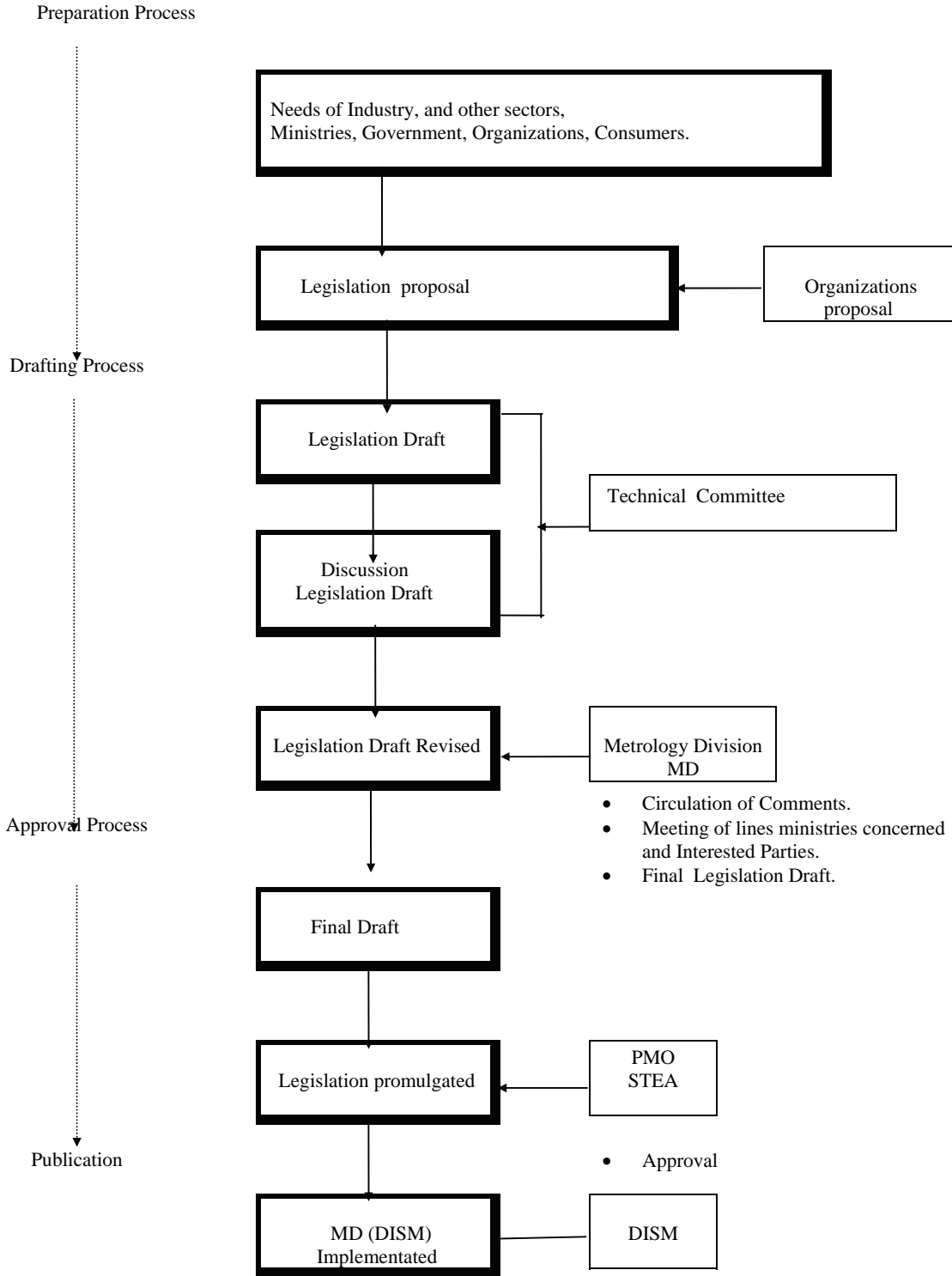
Problems and demands pre-packaged goods and Current position and future steps

Prepackages goods is still a new item and not familiarizes yet for Lao, however to ensure the rightness and the right in trade and limited of taking advantage between producers, retailer and consumers we have drafted a regulation on Prepackages goods since year 2002 (which is the same time as Thailand has started the first Workshop on ASEAN Harmonization on Prepackages goods). However in year 2004 the second Workshop on ASEAN Harmonization on Prepackages goods has organized in Bangkok Thailand to finalize the ASEAN Common Requirements of Prepackage Goods but the regulation drafted (Prepackages goods) was still going distribute to the lines ministries concerned for comments and discussion before sending to the high authority for approval and promulgation.

We expect to promulgate this prepackages goods regulation on next year and to implement soon after all condition are satisfied and certainly we will follow the ASEAN Common Requirements of Prepackages Goods. We also wish that after the training course on developing Legislation for the implementation of OIML recommendation R87 in Kuala Lumpur, we will fully adopt OIML Recommendation R87 in our country. And currently, due to our real situation we are running in general our legislation development as showed in(Annex I).

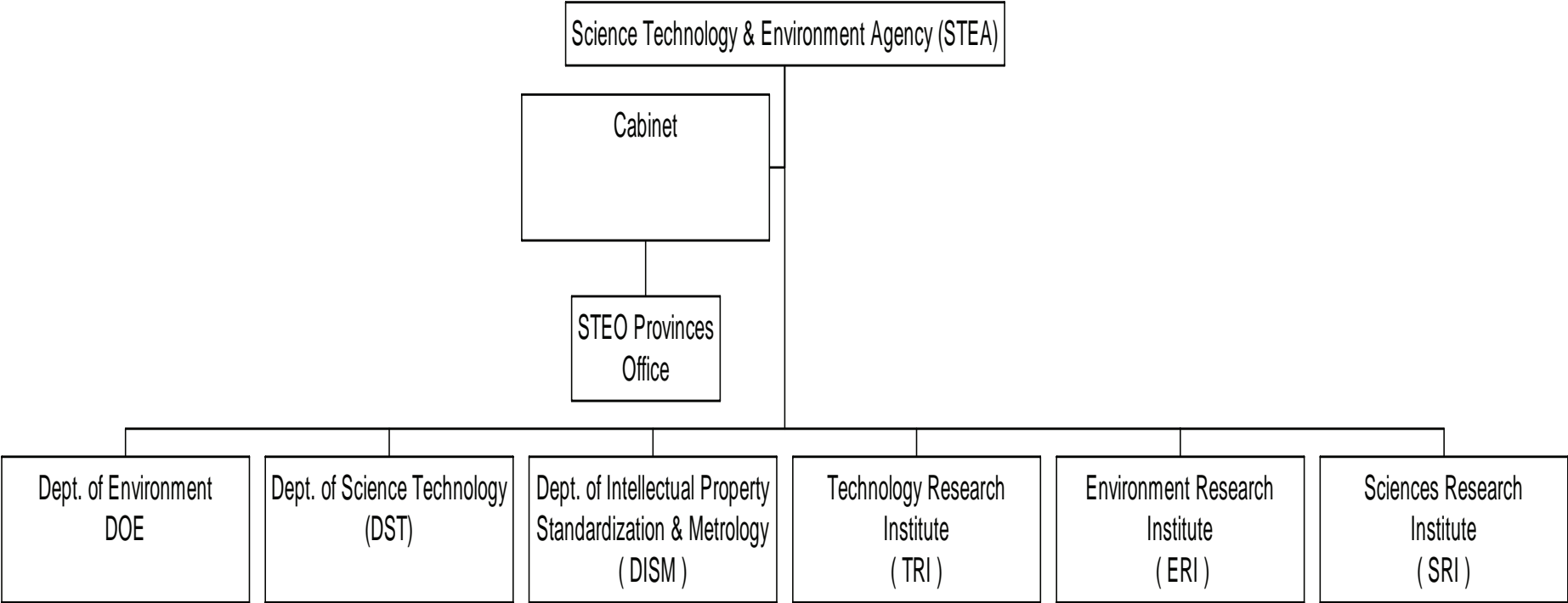
Lao PDR likes some others least developed countries in the region lacked of the basics knowledge both in Legal metrology and physical metrology, therefore to implement any requirements or regulations we always meet the constraints such as budget limited, lack of fundamental equipments to run the inspection for testing of measuring instruments and calibrating standards (Mass, Volume,...)


Annex I
Flow chart of Legislation development of Lao




• MD: Metrology Division.

Science Technology & Environment Agency Chart



LAOS 

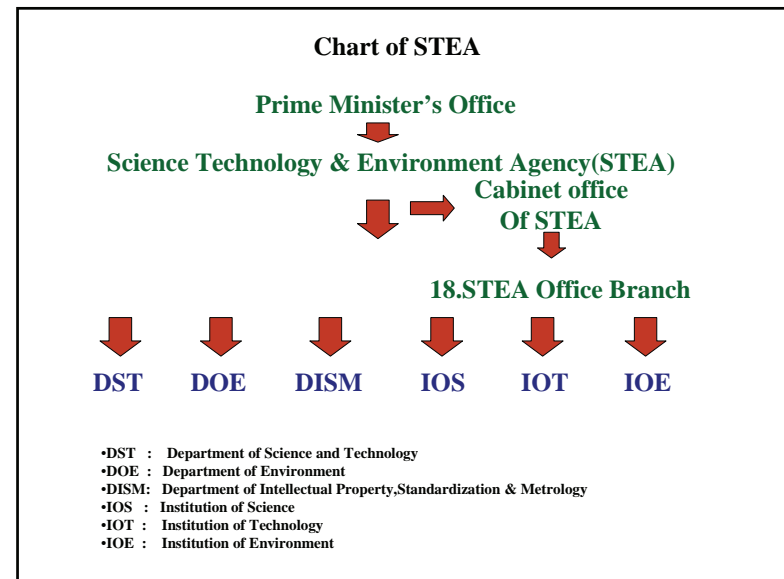
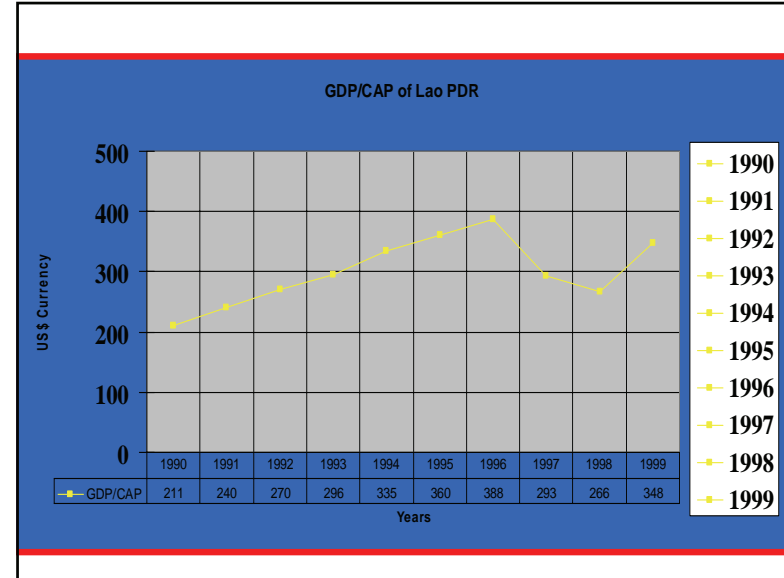
The official name:
Lao People's Democratic Republic

Capital : Vientiane 

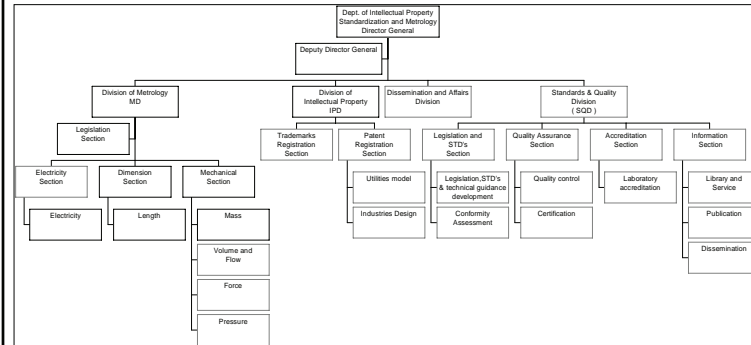
Area : 236,800 square kilometers
91,430 square miles

Population : 5,406,0415 (1999 estimate)
(With a Population growth rate of 2.76 percent ,
80% of Population live in rural areas & mountains)

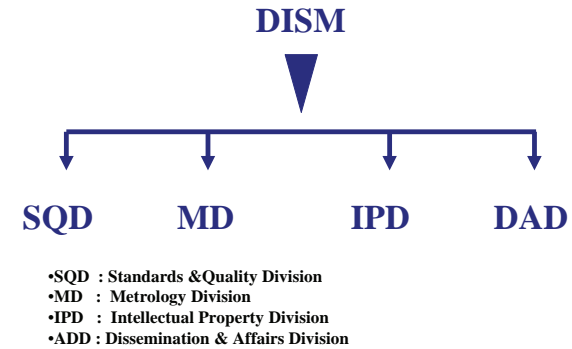
Population density : 22 persons per square kilometer
58 persons per square mile



Organization Chart of DISM



Organization Chart of DISM



ROLES OF DISM

- DISM is the governmental body,
- Responsible for advice the government on issues in the field of IP&MSTQ management in the whole country.
- is the focal point responsible for IP& MSTQ activities and composed of 2 parts Central and Local management

ROLES OF LOCAL LEVEL

- has the role in activities regarding IP & QSTM matters as well as the central activities but according to the recommendations of the central management agency.

Functions of DISM

- Prepare plans, laws rules and regulations on IP & MSTQ and submit them to the higher authorities for approval,
- Organize the supervision and central on the implementation of the approved laws, rules and regulations,
- Establish organization system on IP & MSTQ and provide methodological guidance for all activities of the above system;

Functions of DISM

- Organize formulation of national standards and maintain national metrology standards,
- Provide and implement quality system and product certifications, testing and calibration, verification of metrology equipment and laboratory accreditation. Implement the supervision and inspection on quality of goods and products and measuring instruments;

Functions of DISM

- Conduct studies on IP & MSTQ,
- Improve the technical level of employees, training and cooperate with regional and international organizations in the field of IP & MSTQ management.

Legislation & Regulation

- Decree on metrology management issued on 26 October 1993
- Decree on standards and quality of products management issued on 02 November 1995
- Regulation on Registration of measuring instruments(March 10,1994)
- Guides lines on Registration of Dispensers fuel(February 07,2001).

Legislation & Regulation

- Regulation on Truck fuel tank (Drafted)
- Regulation on Prepackages Goods (Drafted):
 - 1st draft was on year 2000 and composed of 17 provisions.
 - 2nd draft was after the 1st workshop on the Harmonization of Prepackages goods in Thailand.(composed of 20 provisions) which start to know R79 & R87.

Legislation & Regulation

- Regulation on Prepackages Goods(Drafted):
 - After 2 days of APLMF training courses we know more better which is not only R79 , R87 but CODEX and details procedure of making legislation development as well as their related we wish to revise finally by our Department in this year.
- Currently under the UNIDO Project the decree on metrology management issued on 26 October 1993 has been promoted to be Metrology Law.

Final Conclusion on of Prepackages goods

- Lao did not familiarize yet with prepackages goods:(particularly with the information on prepackages goods, codex,R79,R87, and others standards procedure for inspection and test ect..).
- Lao metrologists still Lacked of knowledge and skills on Legal Metrology as well as physical Metrology.

Final Conclusion on of Prepackages goods

- Lacked of Standards procedure for inspection and test prepackages goods as well as Standards procedure for calibrating and testing weight,weigh, measures and basic measuring instruments to extend and promote the metrology activities in the country particularly prepackages goods.

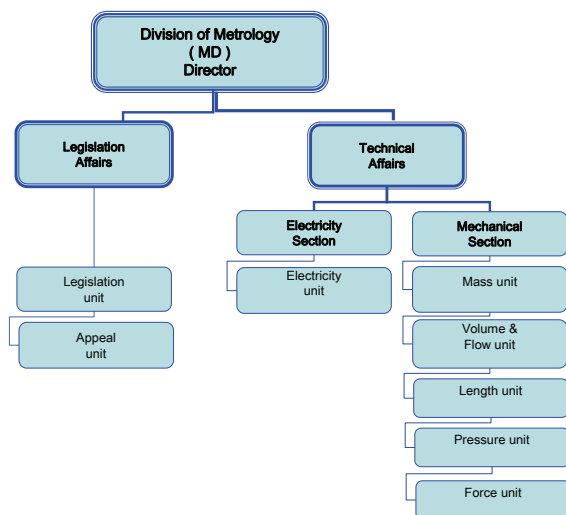
Ex: in case of bottles or cans of beer or Pepsi-cola, bags or bottles of milk, how do we start test them?how do we know that the contain of beer,.... are conformance with the requirements of prepackages goods.

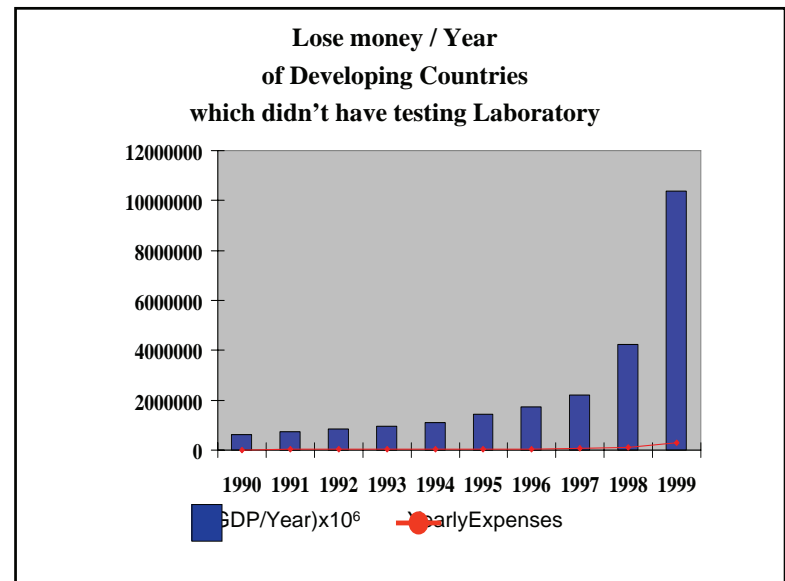
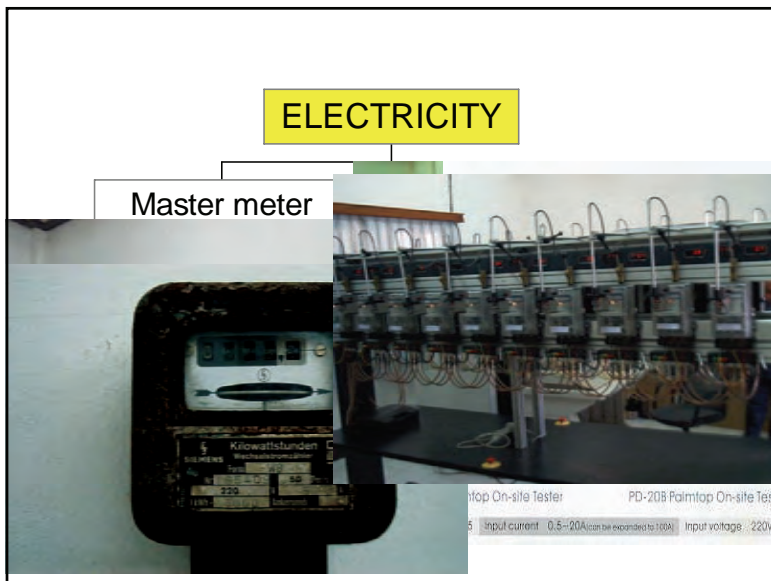
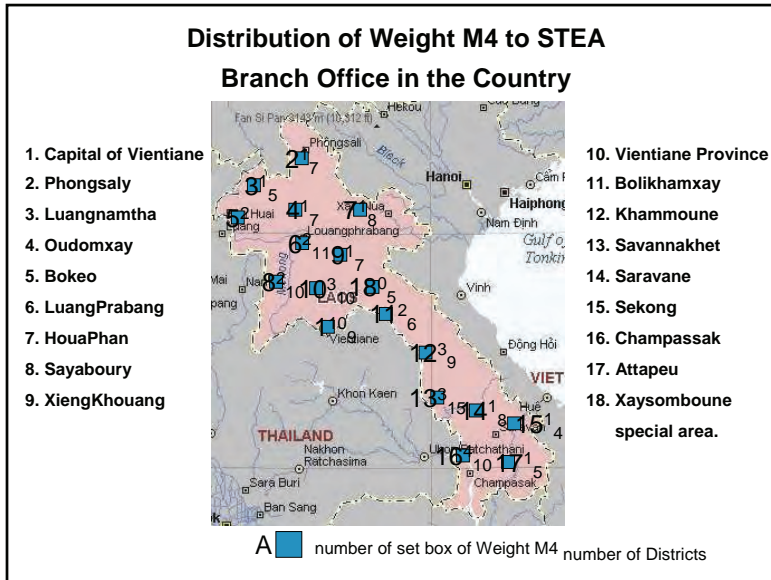
Main priority task of DISM under STEA

- Unify administration and protection of standards and quality throughout the country,
- Speed up economic, scientific and technical development,
- Ensure and improve quality of goods and products,

Main priority task of DISM under STEA

- Encourage legal and proper competitiveness in production and services,
- Protect and ensure consumer rights, facilitate producers to keep products at high quality with environment, safety, labour and hygiene protection,
- Expand international co-operation.





CURRENT SITUATION ON OIML R87 OR PRE-PACKED GOODS IN PNG

Background:

The two major statutory organizations entrusted with the functions and role of implementing Legal metrological requirements in Papua New Guinea are (1) National Institute of Standards and Industrial Technology (**NISIT**), (2) Independent Consumer & Competition Commission (**ICCC**).

NISIT provides for the establishment and use of uniform measurement and technical standards or integrated standardization for the promotion and undertaking of technology development . ICCC with its tripartite functions as an economic regulator, consumer watchdog and promoter of competition and fair trading administers amongst other Acts, the Trade measurement & weights regulations Act, Packaging Act and the Bread Act. All three legislations deal directly with all metrological aspects such as, measurements, weights and packaging. Basically it administers the compliance and the enforcement functions of these legislations.

Problems and demands concerning pre-packaged goods or foods:

Problems:

- quantity or measurement not easily detected at the point of sale.
- Lack of Consumer awareness on rights & responsibilities regarding standard measurements of pre-packed goods and foods.
- Effective monitoring & surveillance limited due to lack of geographical access to many traders/ business in rural remote areas.
- No reasonable warranty on pre- packaged goods like electrical or other household goods sold by less prominent traders or small businesses.
- Foreign imported packaged goods not having equivalent English translation.
- No effective enforcement processes for detecting non compliant imports (under weighed goods).
- Greater risks involved in importing from economies not a party to OIML or APLMF.
- Formal training of ICCC personnel in areas of legal metrology (surveillance, monitoring & enforcement).
- ICCC trade measurement facilities not properly equipped to effectively carry out surveillance & monitoring functions.

Demands:

- Effective legal and Policy mechanisms needed to guide and implement R87 requirements.
- Proper standards need to be adopted to justify that consumers not only get their moneys value but also good quality for health reasons (food products).
- NISIT requires appropriate funding to effectively implement R87 requirements in PNG.
- Proper Administrative mechanisms needed to efficiently monitor all relevant networks involved in the Legal and Scientific Metrology field in order to maintain consistency in whatever standards, that are adopted by the OIML.
- Mandatory labeling and traceability of pre-packaged imported goods.

Current Position and Future steps adopting R87.

PNG is an active member of both APLMF and OIML. It is desirous of continuing its membership with these organizations, despite the many difficulties, it encounters in its enforcement and compliance frameworks. This meeting could be a good opportunity to address such drawbacks if time permits.

Future steps adopting R87 are very optimistic given the overall support by the Government in its current Legal and Policy frameworks. Perhaps equal attention should be geared towards technical training both domestic and overseas and this will require financial and logistics support from donor countries like, Australia, New Zealand and Japan or other advanced economies signatories to APEC.

Measurement Standards and their approach to pre-packaging instrumentation.

Re-visit R87 OIML requirements for purposes of clarity and universal application. Net content (excluding wrapper and any other material packed with such commodity). Updating of pre-packaging instrumentation to conform to approved international standards (OIML R87).

John S. Goava BA . LLB (UPNG)
Assistant Manager – Consumer Education Branch
Consumer Protection Division- ICCC.

30 July, 2004 – Kuala Lumpur , Malaysia.

CURRENT SITUATION OF PRE-PACKAGED GOODS IN THE AMERICAN REGION.

All the Inter-American Metrology System (SIM) member countries have been working in the field of packed products since some years ago, we have been realized different work meetings organized by the SIM Legal Metrology Work Group (LMWG) in order to fomenting and discussing the legal metrology in the field of Package and Labeling products. It is important to mention that commitments exist of each one of the SIM member countries to adopt and implement the international recommendation OIML R79 and R87, for which every member have to work in the following items:

1° Encourage governments of each country to adopt international recommendations OIML R79 and R87.

2° Harmonize existing standards for net contents in the countries of the region, taking OIML R87 as the basis.

3° Sampling methods and test procedures should be consistent with OIML R87 ; however, procedures for smaller lot sizes and packages with small counts should be developed.

4° All the members agree to work to simplify the net content statement on packages. For example, if the net content is expressed in the measurement system of the consuming country, it wouldn't be necessary to translate other units.

To know the situation of each one of the SIM members in the packed products field the LMG-SIM carry out on December, 2001 a questionnaire with the purpose of gathering information and to elaborate a data base to see the advances achieved by all the member countries in the field of packed products. The results were presented in the meeting that realized the LMWG in Miami (December, 2001), 19 of 34 member countries answered the questionnaire. The questions and the result of the above mentioned questionnaire are indicated in the attached files.

Some appreciations and comments of the result of the questionnaire to have an idea of the situation in this region in the field of packed products :

1° The majority of SIM'S member countries have legal and normative documents that regulate the packed products (Labeling and Net Content).

2° Declaration of net quantity of contents is obligatory in all the countries.

3° The required information must be in the official language of each country.

4° In some countries aren't necessary nutritional labeling.

5° All countries have to enforcement authority for packed labeling.

2. PACKED PRODUCTS – PERUVIAN SCHEME

A) LEGAL DEVICES

- Law of protection to the consumer, legislative decree 716 and 807 “The providers are forced to fulfill with the safety procedure and labelling of the product or service where it corresponds”

B) CONTROL INSTITUTIONS

- INDECOPI, The National Institute for the Defense of Competition and Protection of Intellectual Property – Indecopi promote a culture of fair and honest competition in the Peruvian economy. To achieve the assigned function INDECOPI possesses between others the following areas:
 - Protection Consumer Commission (PCC): facilitates the exchange of products and services on the market, promoting the respect and exercise of the rights and duties of the consumers.
 - Technical and Commercial Standard Commission : The functions are the prevention of technical barriers in the commerce. National organism of Normalization and Accreditation.
 - National Metrology Service (NMS) : Safeguard, preserve and maintain the national standards of measurement units; offers services of calibration and metrological certification to the industry, science and commerce.
- Ministry of Health
- Ministry of Agriculture
- Ministry of Fishing

C) LEGAL AND NORMATIVE DOCUMENTS OF THE PACKED PRODUCTS

- Metrological Standard Peruvian (Norma Metrologica Peruana - NMP) : They are of obligatory character
 - NMP 001 1995 : Packed Products, Labelling (Adoption of the OIML R79)
The NMP specifies the minimal information related to Labelling in the packed products, basically it consists of the name of the product, quality of the product and net content.
 - NMP 002 1995 : Packed Products. – Net Content (Adoption of the OIML R87)
This NMP specifies the legal metrology requirement for packed products, (Average Requirement, Individual packed requirement)
- Technical Standard Peruvian (Norma Técnica Peruana - NTP) : They are of advisable character
 - NTP 209.038 1994 : Packed food – Labelling (Adoption of CODEX ALIMENTARIUS)
- Regulation of Alertness and Sanitary Control of Foods and Drinks: It’s of obligatory character and establishes that the labelling must be in accordance with the NMP 001 1995: Packed Products – Labelling, They have to contain at least the following information:
 - Name of the product

- Declaration of the ingredients and additives used in product making.
- Name and address of the manufacturer
- Name, social reason and address of importer, which it will be able to figure in additional label
- Number of Sanitary Record
- Date of expiration, when the product needs it according to what establishes Codex Alimentarius or the sanitary Peruvian standard
- Code of the lot
- Special conditions of conservation, when the product needs it.

D) INSPECTION OF PACKED PRODUCTS

The tests to determine if the packed products comply with the requirements of the standard are realized by INDECOPI. The Protection Consumer Commission determines the product for verifying only in the cases where the product shows quantity of contents that may mislead a consumer. The National Metrology Service offers the technical support to realize the tests.

The steps in the future will be to check the new version of the OIML R 87 and to update the Metrological Standard Peruvian NMP 002 1995.

Leonardo De la cruz García
INDECOPI - PERU
Senior Assistant
National Metrology Service
E-Mail: ldelacruz@indecopi.gob.pe
Phone: (51-1) 2247800
Fax: (51-1) 2240348

PACKED PRODUCTS

LEONARDO DE LA CRUZ
NATIONAL METROLOGY SERVICE
INDECOPI - PERU

CURRENT SITUATION OF PRE-PACKAGED GOODS IN THE AMERICAN REGION

Agreements Previous :

- * Encourage governments of each country to adopt international recommendations OIML R79 and R87.
- * Harmonize existing standards for net contents in the countries of the region, taking OIML R87 as the basis.
- * Sampling methods and test procedures should be consistent with OIML R 87; however, procedures for smaller lot sizes and packages with small counts should be developed.

Agreements Previous :

- * All the members agree to work to simplify the net content statement on packages. For example, if the net content is expressed in the measurement system of the consuming country, it wouldn't be necessary to translate other units.

APPRECIATIONS AND COMMENTS ABOUT OF THE PACKED PRODUCTS IN THE REGION

- * The majority of SIM'S member countries have legal and normative documents that regulate the packed products (Labeling and Net Content).**
- * Declaration of net quantity of contents is obligatory in all the countries.**

- * The required information must be in the official language of each country.**
- * In some countries aren't necessary nutritional labeling.**
- * All countries have to enforcement authority for packed labeling.**

PACKED PRODUCTS -PERUVIAN SCHEME

A.- LEGAL DEVICES

Law of protection to the consumer

B.- CONTROL INSTITUTIONS

*** INDECOPI**

- Protection Consumer Commission (PCC)
- Technical and Commercial Standard Commission
- National Metrology Service (NMS)

*** MINISTRY HEALTH**

*** MINISTRY OF AGRICULTURE**

*** MINISTRY OF FISHING**

C.- LEGAL AND NORMATIVE DOCUMENTS OF THE PACKED PRODUCTS

*** Metrological Standard Peruvian**

(Norma Metrologica Peruana - NMP)

- NMP 001 1995 : Packed Products, Labelling (Adoption of the OIML R79)
- NMP 002 1995 : Packed Products. – Net Content (Adoption of the OIML R87)

*** Technical Standard Peruvian**

(Norma Tecnica Peruana - NTP)

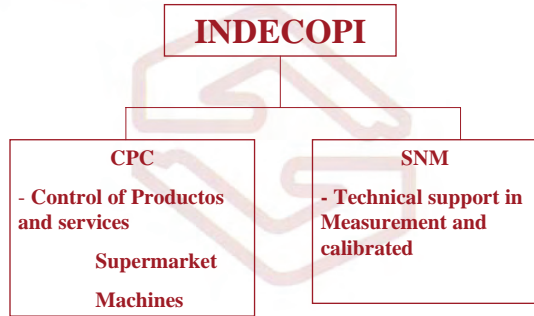
- NTP 209.038 1994 : Packed food – Labelling (Adoption of CODEX ALIMENTARIUS)

*** Regulation of Alertness and Sanitary Control of Foods and Drinks:**

*** Packed Products – Labelling, They have to contain at least the following information:**

- Name of the product.
- Declaration of the ingredients and additives used in product making.
- Name and address of the manufacturer.
- Name, social reason and address of importer, which it will be able to figure in additional label.
- Number of Sanitary Record.
- Date of expiration, when the product needs it according to what establishes Codex Alimentarius or the sanitary Peruvian standard
- Code of the lot.
- Special conditions of conservation, when the product needs it.

D.- INSPECION OF PACKED PRODUCTS



Basic Labeling Requirements for Consumer Packages

(This is not a complete listing of the labeling requirements that may apply to any product.)

	Argentina	Barbados	Bolivia	Brazil	Canada	Chile	Costa Rica	Dominica	El Salvador	Guatemala	Haiti	Jamaica	Mexico	Nicaragua	Paraguay	Péru	Saint Lucia	Uruguay	USA
Section 1: Do you require the following information to appear on the package label?																			
1.1	SI	Yes No	SI No	No	Yes	SI	SI	Yes	SI	No	Yes	Yes	Si	Si	SI SI	Si	Yes	Yes No	Yes Yes
1.2	SI	Yes	SI	Yes	Yes	si	SI	Yes	SI		Yes	Yes	Si	Si	SI	Si	Yes	Yes	Yes
1.3	SI	Yes	SI	Yes	Yes	Si	SI	Yes	SI		Yes	Yes	Si	Si	SI	Si	Yes	Yes	Yes
1.4	SI	Yes	SI	Yes	Yes	Si	SI	Yes	SI		No	Yes	Si	Si	SI	Si	Yes	Yes	Yes
1.5	SI	Yes	SI	Yes	Yes	Si	SI	Yes	SI		No	Yes	Si	Si	SI	Si	Yes	Yes	Yes
For Food Products:																			
1.6	No	No	No	Yes	Yes	SI	No	Yes	SI	No	No	No	-	No	SI	No	No	No	Yes
For Foods, Drugs and Cosmetics:																			
1.7	SI	Yes	SI	Yes	Yes	Si	SI	Yes	SI	Si No No	Yes	Yes	Si	Si	SI	Si	Yes	Yes	Yes
1.8	SI	Yes	SI	Yes	Yes	Si	SI	Yes	SI	Si Si No	Yes	Yes	Si	Si	SI	Si	Yes	Yes	Yes
Section 2: Language Requirements																			
2.1	SI	Yes	SI	Yes	Yes	Si	SI	Yes	SI	Si	No	Yes	Si	Si	SI	Si	Yes	Yes	Yes
2.2	SI	Yes	SI	Yes	Yes	Si	SI	Yes	SI	Si	Yes	Yes	Si	Si	SI	Si	Yes	Yes	Yes
2.3	No	No	No	No	No	No	No	No	No	No	No	No	No	No	SI	No	No	No	No
2.4	No	No	No	Yes	No	Si	No	No	SI	Si		No	Si	No	X/O	No	No	No	No
2.5	SI		SI	Yes	Yes	Si	SI	Yes	SI	Si		Yes	-	Si	SI	Si	Yes	Yes	Yes
Section 3: The following items address details of requirements that may apply to the principal display panel of a package (PDP). The PDP is that part or parts of a label or package that is designed so that it is most likely to be displayed to the consumer when presented for sale to the consumer.																			
3.1	SI	Yes	SI	Yes	Yes	Si	No	Yes	SI	Si	No	Yes	Si	No	SI	Si	Yes	Yes	Yes
3.2	SI	Yes	SI	Yes	Yes	Si	No	Yes	SI	Si	No	Yes	Si	No	SI	Si	Yes	Yes	Yes
3.3	No	No	No	No	No		No	Yes	SI	Si	No	Yes	No	No	SI	No	Yes	No	Yes
3.4	No	No	No	No	No	Si	No	Yes		No	No	Yes	No	No	SI	Si	Yes	No	Yes
3.5	SI	No	SI	Yes	Yes	Si	No	Yes	SI	Si	No	Yes	Si	No	SI	Si	Yes	Yes	Yes
3.6	No	No	No	Yes	Yes	Si	No		SI	No	No		Si	Si	-	No	Yes	Yes	Yes
Section 4: The following items address details regarding the declaration of the net quantity of contents.																			
4.1		.o.	.o.	,	.o.	.	,	.o.	S.I.	.o.	,o.	.o.	,	.o.		.o.	.	.o.	.o.
4.2	SI	No	SI	Yes	Yes	Si	No	Yes	SI	Si	No	Yes	-	No	SI	Si	Yes	Yes	Yes
4.3	No	Yes	SI	No	No	Si	No	Yes	SI	Si	No	Yes	Si	Si	SI	Si	Yes	Yes	No
4.4	No	No	SI	Yes	No	No	No	Yes	SI	Si	No	Yes	Si	No	SI	Si	Yes		Yes
4.5	SI	No	No	Yes	Yes	Si	No	Yes	No	Si	No	Yes	Si	No	SI	No	Yes	Yes	Yes
4.6	SI	Yes	SI	Yes	Yes	Si	SI	Yes	SI	Si	No	Yes	Si	Si	SI	Si	Yes	Yes	Yes
4.7a	SI	No	SI	Yes	Yes	Si	SI	No	SI	Si	No	Yes	Si	SI	No	Si	Yes	No	No
4.7b	SI	No	No	Yes	No	No	No	No	No	No	Yes	No	-	No	SI	No	No	Yes	No
4.7c	No	No	No	Yes	No	No	No	Yes	SI	No	No	No	No	No	No	No	No	No	No
4.7d	No	No	No	No	No	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	Yes
4.8	No	No	No	No	Yes	No	No	Yes	No	No	No	Yes	No	No	SI	No	Yes	No	Yes
4.9	SI	No	No	No	Yes	No	No	No	SI	No	No	No	-	Si	-	No	No	No	Yes
4.10	SI	No		Yes	Yes	Si	No		No	No	No	Yes	Si	Si	No	Si	Yes	Yes	Yes
4.11	No	Yes	SI	Yes	Yes	Si	SI	Yes	SI	Si	No	Yes	Si	No	SI	Si	Yes	Yes	Yes
4.12	No	No	No	No	No	Si	No	No	SI	No	No	Yes	-	No	SI	No	Yes	Yes	Yes
4.13	SI	No	No	Yes	Yes	Si	SI		No	No	No	Yes	Si	No	-	No	Yes	Yes	Yes

Section 5: Other labeling requirements																			
5.1		No	No	Yes		Si	No	Yes	No	No	No	Yes	No	No	SI	No	No	Yes	Yes
5.2	No	No		Yes	Yes	Si	SI	No		Si	No		No	Si	SI	No	Yes	Yes	Yes
5.3	SI		No				SI	Yes	No	No	No		No	No	-				
a.		No		Yes		SI	SI									SI		Yes	Yes
b.		No		Yes		SI	SI									SI		Yes	No
c.		No	Si	Yes		SI	SI									SI		Yes	Yes
d.		No		Yes												SI		Yes	Yes
Masa			Si				SI												
Volumen			Si	Yes		SI	SI												
Área			No			SI													
Largo			No																
Conteo			No																
e.		No		Yes			SI									SI		Yes	Yes
5.4	SI	Yes	No	Yes	No	Si	No	Yes	SI	Si	No		-	No	SI	Si	Yes	Yes	Yes
5.5	No			Yes	Yes	Si	No	Yes	SI	Si	No	Yes	Si	Si	No	No	No	Yes	Yes
5.6	SI	Yes	SI	Yes	Yes	SI	SI	Yes	SI	No	No	Yes	Si	No	SI	Si	Yes	Yes	Yes
5.7	No	Yes	SI	Yes	Yes	Si	SI	Yes	SI	Si	No	Yes	Si	No	SI	No	Yes	No	Yes
5.8	No		No	Yes	Yes	SI	No	Yes	SI	No	No	Yes	No	No	SI	No	Yes	No	Yes
5.9	¿?			Yes	No	Si	SI	Yes	No	No	No	Yes	No	No	SI	Si	Yes	No	Yes
5.10	SI	Yes	SI	Yes	Yes	Si	SI	Yes	SI	Si	No	Yes	Si	No	SI	Si	Yes		Yes
5.11	SI	No	No	No	Yes	Si	No		No	No	No		No	No	SI	No	No	No	Yes
5.12	SI	Yes	No	Yes	No	si	SI	Yes	SI	No	No	Yes	No	No	SI	No	No	Yes	Yes
5.13																			
5.14	SI	No	SI	Yes	Yes	SI	No	Yes	SI	No	No		-	No	SI	No		Yes	Yes

Packaged commodities control in Thailand:

1. Legislative control for packaged commodities.

The legislative control for packaged commodities is prescribed in the Weights and Measures Act B.E 2542(1999) and the Ministerial Notification to protect consumers from being cheated or misleading conducts in packaging system. Weights and Measures Act concerning the packaged commodities are as follows,

1.1 The meaning of “Packaged commodities” and “Packer”

Section 4:

“Packaged commodity” means a commodity enclosed in a container or wrapped with the intent to be purchased, sold or distributed in the quantity as packed or wrapped, whether or not it is purchased, sold or distributed together with its container or wrapped.

“Packer” means the manufacturer of a packaged commodity, and also means the importer or re-packer of a packaged commodity but does not include the seller or distributor of a packaged commodity by ways of dividing its contents with the intention that it is not to be regarded as a packaged commodity.

1.2 The usage of weight and measure units in metric system or customary system.

Section 9:

All weights and measures shall be the metric system of weights and measures or the system in customary use adapted to the metric system prescribed in the annex to this Act.

Section 10:

If the minister considers it is appropriate, for the purchase, selling, or distribution of any commodity in any area, to use the metric system of weights and measures pursuant to Section 9 or to be conducted by weights, by volume, or by measurement, he shall have the power to issue Notifications.

The Notifications issued under the first paragraph shall be enforced after the lapse of sixty days from the date of its publication in the Government Gazette onwards.

1.3 Packaged Commodities

Chapter 6

Packaged Commodities

Section 62:

The Minister shall have the power to prescribe the types of packaged commodities, which the packers are required:

- (1) to declare the quantity of the commodity on its package ;
- (2) to declare the quantity of the commodity in accordance with the prescribed rules and procedures ; or
- (3) to pack the commodity in the prescribed quantity.

The Notifications issued under the first paragraph shall be published in the Government Gazette and shall be come effective on the date prescribed by the Minister, but not less than sixty days from the date of its publication in the Government Gazette.

Section 63:

The declaration of the quantity of the packaged commodity under Section 62 or which is declared by the packer on the package shall be accurately corresponding to the quantity of the commodity contained in the package.

The declaration of quantity on the package, which is erroneous not exceeding the permissible error prescribed in the Ministerial Notifications, shall be regarded as accurate declaration.

Section 64:

For all packaged commodities imported into the Kingdom, which the declaration of their quantities is expressed in weights and measures of foreign countries, the importer shall declare the quantity of such commodity in the weight and measure units in accordance with this Act, using the methods and the Table of Equivalence prescribed in the Ministerial Notifications under this Act.

The declaration of the commodity under the first paragraph shall be made before taking such commodity from the customs officers, except it is permitted to be made thereafter by the Director-General or person assigned by him in accordance with the prescribed procedures and conditions.”

1.4 Offences and Penalties

Chapter 8 Offences and Penalties

Section 66:

Any person who uses any weights and measures other than those prescribed in Section 9 for buying, selling, or distributing commodities shall be liable to a fine not exceeding five thousand baht.

Section 67:

Any person who uses the weights and measures or commits weighing or measuring any commodity for buy, sale, or distribution, which are not in conformity with the Ministerial Notifications issued under Section 10, shall be liable to a fine not exceeding five thousand baht.

Section 83:

Any packer who violates the Ministerial Notifications issued under Section 62 shall be liable to imprisonment not exceeding six months or a fine not exceeding twenty thousand baht or both.

Section 84:

Any packer who packs the commodity and knows that the quantity of such commodity contained in the package is not accurately corresponding to the quantity as declared in such a manner to cause damage to any other person or the public shall be liable to imprisonment not exceeding one year or a fine not exceeding forty thousand baht or both.

Section 85:

Any person who sells, distributes, or possesses for sale or distribution of any packaged commodity with the quantity declared and knows that the quantity of such commodity contained in the package is not accurately corresponding to the quantity as declared in such a manner to cause damage to any other person or the public shall be liable to imprisonment not exceeding six months or a fine not exceeding twenty thousand baht or both.

Section 86:

Any person who sells or possesses for sale of any packaged commodity without the declaration of its quantity under Section 62 (1) or the first paragraph of Section 64 shall be liable to a fine not exceeding five thousand baht.

Section 87:

Any importer who fails to comply with the requirements to declare the quantity and the Table of Equivalence prescribed in the Ministerial Notifications issued under the first paragraph of Section 64 or fails to comply with the procedures or conditions prescribed by the Director-General or the person assigned by him under the second paragraph of Section 64 shall be liable to a fine not exceeding five thousand baht.

Section 88:

In the event an offender punishable under this Act is a juristic person, managing director, manager or representative of such juristic person, except those who can prove that the juristic person has acted without their knowledge or consent, shall be liable to the penalties prescribed for the offence.

1.5 Notification of Ministry of Commerce:

1.5.1 Re: Prescribe Types and Declare Quantity of the Packaged Commodities B.E.2543 (2000)

No.3.The commodity per the list annexed hereto shall be the types of packaged commodities for sale or distribution in the Kingdom that the packer must declare the quantity of the packaged commodity according to the commodities of list 1 hereto annexed to this Ministerial Notifications. Except the packaged commodities, their declaration of the quantity shall be the weight unit more than 50 kg or the volume unit more than 20 l and the weight unit less than 5 g or the volume unit less than 10 ml.

No. 4. The packer of No. 3 must declare the quantity of packaged commodities with rules and means as follows,

- (1) declare the net quantity or the real quantity of the commodity on its package but not including the quantity of package.
- (2) declare the quantity be weight and measure units of metric system or count units depending on each declaration types of packaged commodities with the numerals of Thai or Arabic language and the letters of Thai language.
- (3) have the Thai language content of "Net quantity" or other Thai language contents be the same meaning in front of the quantity of commodity according to (1).

- (4) declare the quantity of commodity and the contents according to (1) (2) and (3) at its package label or its package clearly and legibly. Numerals and letters shall be the height size no less than 2 millimeters and shall be permanent and obliterated.
- (5) In case of declaring the quantity of commodities at its package label or its package to be many sides of package that the quantity of commodities shall be declared the same.
- (6) The declaration of net quantity of commodity at its label shall be accurately corresponding to the quantity of the commodity contained in the package or may be short no more than the maximum permissible errors according to the list 2 hereto annexed to this Ministerial Notifications. Using the standard rules for checking the net quantity of packaged commodities according to Central Bureau of Weights and Measures prescribed.
- (7) The packaged commodities contain the small packaged commodities that there are the same commodity and quantity from two packages up and individual small packages, that can be sold or distributed, separated out of the large packaged commodities. Pack of the large packaged commodities shall be declared a number of the small packages and the quantity of the commodity in the small packages in accordance with the methods are prescribed in (1) (2) (3) (4) (5) and (6).

1.5.2 List Annex,

**List 1 Annexed to Notification of Ministry of Commerce
Re: Prescribe Types and Declare Quantity of the Packaged Commodities.
B.E. 2543 (2000)**

Description

Section Animal products

1. Meat and edible meat offal of bovine animals, swine, and poultry.
2. Fish and crustaceans, mollusks and other aquatic invertebrates.
3. Milk and whey, whether or not concentrated or containing added sugar or other sweetening matter.
4. Yogurt, and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavored or containing added fruit or cocoa.

Section Vegetable products

5. Edible vegetables and certain roots and tubers.
6. Edible fruit and nuts, peel of citrus fruit or melons.]
7. Coffee, roasted.
8. Edible tea.
9. Pepper of the genus Piper and fruits of the genus Capsicum or of the genus Pimenta dried or crushed of ground.
10. Husked rice, semi-milled or wholly milled rice, whether or not polished or glazed, and broken rice.
11. Edible flour, meal or flakes.

Section Animal or vegetable fats and oils and their cleavage products, prepared edible fats, animal or vegetable waxes.

12. Edible animal or vegetable fats and oils.

Section Prepared foodstuffs, beverages, spirits and vinegar.

13. Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates.

14. Sugars.

15. Coconut sugar or palm sugar, sugar syrups not containing added flavoring or coloring matter, artificial honey, whether or not mixed with natural honey.

16. Cocoa and cocoa preparations.

17. Preparations for infant use.

18. Fruit, nuts and other edible parts of plants, otherwise prepared or preserved whether or not containing added sugar or other sweetening matter or spirit.

19. Instant coffee and instant tea.

20. Fish sauce, soy sauce, sauces and preparations therefor, mixed condiments and mixed seasonings, instant curry, mustard flour and meal and prepared mustard.

21. Noodles containing eggs, noodles or vermicelli made from rice, vermicelli made from bean, macaroni, whether or not instant.

22. Instant non-dairy creamer.

23. Waters, waters containing added sugar, mineral waters, aerated water, and other beverages, whether or not alcoholic.

24. Vinegar.

25. Residues and waste from the food industries, prepared animal fodder.

Section Mineral products

26. Edible salt.

27. Lime.

28. Cement.

29. Kerosene, lubricating oil, hydraulic brake fluid, and lubricating grease.

30. Liquid petroleum gas packed in tanks for cooking use.

Section Products of the chemical or allied industries.

31. Monosodium glutamate.

32. Fertilizers.

33. Paints and varnishes for house, building or other materials use.

34. Ink for printing or writing use.

35. Talcum powders for body use.

36. Shampoos, hair oils, hair conditioners or treatments.

37. Dentifrice.

38. Soap, organic surface-active products and preparations for use as soap, for toilet use.

39. Detergent powder and other detergents.

- 40. Liquid and powder organic surface-active agents for vegetables and fruits cleaner.
- 41. Liquid and powder organic surface-active agents for clean bathroom ware, toilet ware, and kitchenware.
- 42. Liquid organic surface-active agents for glass cleaner.
- 43. Matches.
- 44. Thinners.

Section Paper, paperboard, and articles of paper or of paperboard.

- 45. Toilet paper, facial cleansing paper and hand cleansing paper.
- 46. Paper for printing or writing use.

Section Textiles and textile articles.

- 47. Yarn.
- 48. Silk yarn.
- 49. Sanitary towel.

Section Base metals and articles of base metal.

- 50. Nails.

**List 2, Annexed to Notification of Ministry of Commerce
Re: Prescribe Types and Declare Quantity of the Packaged Commodities.
B.E. 2543 (2000)**

Maximum permissible errors

Maximum permissible errors for the declaration of the net quantity of the packaged commodity described in the following.

No.1 Maximum permissible errors for an individual package labeled by weight.

Declaration of the quantity on packages	Maximum permissible errors
≤ 200 g	6 %
>200 g to 1 kg	3 %
> 1 kg to 5 kg	2 %
> 5 kg to 15 kg	1.5 %
> 15 kg to 50 kg	1 %

No. 2 Maximum permissible errors for an individual package labeled by volume.

Declaration of the quantity on packages	Maximum permissible errors
≤ 50 ml	6 %
> 50 ml to 500 ml	3 %
> 500 ml to 1 l	2 %
> 1 l to 10 l	1.5 %
> 10 l to 20 l	1 %

No. 3 Maximum permissible errors for an individual package labeled by length.

Declaration of the quantity on packages	Maximum permissible errors
≤1 m	2%
>1 m	1%

No. 4 Maximum permissible errors for an individual package labeled by count.

Declaration of the quantity on packages	Maximum permissible errors
≤35 units	-
>35 units to 50 units	3%
>50 units	2%

1.5.3 Re: Types of Packaged Commodities Required to be Packed According to Designated Quantity (No. 2) B.E. 2545 (2002)

No. 3. The Notification of Ministry of Commerce Re Types of Packaged Commodities Required to be Packed According to Designated Quantity B.E. 2543 (2000) shall be repealed.

No. 4. The commodity per the list annexed hereto shall be the types of packaged commodities for sale or distribution in the Kingdom that the packer must pack the commodity according to the designated quantity per the schedule hereto annexed.”

List Annexed to Notification of Ministry of Commerce Re Type of Packaged Commodities Required to be Packed According to Designated Quantity B.E. 2545 (2002)

Group/List of Commodities	Size of Packing	Unit
<u>Group:</u> Flavoured food, beverages, liquor, and vinegar.		
Fish sauce.	200, 250, 300, 350, 500, 530, 600, 700 (for size less than 200 and more than 700, no designated size of packing thereof).	cubic centimeter or cm ³ milliliter or ml
Soy bean sauce.	200, 250, 300, 500, 530, 620 (for size less than 200 and more than 620, no designated size of packing thereof).	cubic centimeter or cm ³ milliliter or ml
Sauce made from soy bean.	200, 300, 600, 700 (for size less than 200 and more than 700, no designated size of	cubic centimeter or cm ³ milliliter or ml

Vinegar.	packing thereof). 200, 300, 500, 530, 700 (for size less than 200 and more than 700, no designated size of packing thereof).	cubic centimeter or cm ³ milliliter or ml
<u>Group:</u> Products from minerals. Lubricating oils.	1. <u>For use with motor car.</u> 1.0, 3.0, 3.5, 4.0, 4.5, 5.0 (for size less than 1.0 and more than 5.0, no designated size of packing thereof). 2. <u>For use with motorcycle.</u> 0.5, 0.7, 0.8, 1.0 (for size less than 0.5 and more than 1.0, no designated size of packing thereof).	liter or l liter or l
<u>Group:</u> Products from chemical industry or related industries. Talcum powder.	100, 150, 200 (for size less than 100 and more than 200, no designated size of packing thereof).	gram or g
Shampoo.	100, 125, 150, 200 (for size less than 100 and more than 200, no designated size of packing thereof).	cubic centimeter or cm ³ milliliter or ml
Toothpaste.	100, 130, 160 (for size less than 100 and more than 160, no designated size of packing thereof).	gram or g
<u>Group:</u> Products from chemical industry or related industries.		

Soap (of tube, bar description).	100, 110, 120 (for size less than 100 and more than 120, no designated size of packing thereof).	gram or g
Detergent (in powder form).	100, 200, 300, 700 (for size less than 100 and more than 700, no designated size of packing thereof).	gram or g
<u>Group:</u> Paper, cardboard, and things made of paper or cardboard.		
Toilet paper.	20, 21, 22, 24 (for size less than 20 and more than 24, no designated size of packing thereof).	meter/roll

1.5.4 Re: Methods and Table of Equivalence in Weights and Measures of Foreign Countries and Weights and Measures Prescribed in this Act B.E. 2542. B.E. 2543 (2000)

No. 3. All packaged commodities imported into the Kingdom, which the declaration of their quantities is expressed in weights and measures of foreign countries, the importer shall declare the quantity of such commodity in the weight and measure units in the metric system in accordance with the Table of Equivalence hereto annexed.

No. 4. The declaration of the quantity of commodities in accordance with No. 3. shall be numerals or letters permanent, obliterated, clearly, and legibly and their height size shall not be less than 2 millimeters by declaration of Equivalence be near the quantity of weights and measures of foreign countries.

In case that the quantity of commodities must be declared in accordance with paragraph 1, there is decimal. The declaration of decimal shall be possibly only one position of decimal.

1.5.5 Re: Commodities Required to be Purchased, Sold or Distributed by Weight in Metric System. B.E. 2543 (2000)

No. 3. For the purchase, selling, or distribution of the commodities according to the list annexed hereto in whole area of the Kingdom to use the metric system of weights only.

1.6 Propriety of Central Bureau of Weights and Measures

1.6.1 Re: Practice of Inspection of the Declaration of the Net Quantity of the Packaged Commodities. B.E. 2543 (2000)

No. 3. The sampling of packaged commodities for checking the declaration of net quantity shall be separated at each case as follows:

- (1) the packaged commodities are the same kind and declare the same net quantity. (Standard packages.)
- (2) the packaged commodities are the same kind and declare the different net quantity. (Random packages.)

No. 4. The sampling of packaged commodities according to No. 3. for checking the declaration of net quantity shall be taken as follows :

- (1) The packaged commodities are not exceeding 100 packages. The packaged commodities are been sampling not exceeding 10 packages.
- (2) The packaged commodities are exceeding 100 packages up to 250 packages. The packaged commodities are been sampling 11 packages but not exceeding 20 packages.
- (3) The packaged commodities are exceeding 250 packages. The packaged commodities are been sampling 21 packages but not exceeding 40 packages.

No. 5. The considerable rule of the result for checking the declaration of net quantity shall be accurately according to No. 4.(6) of Notification of Ministry of Commerce Re Prescribe Types and Declare Quantity of the Packaged Commodities. B.E. 2543 (2000) as follows :

- (1) In case of checking the packaged commodities are the same kind and declare the same net quantity, the average net quantity of the packaged commodity samples must not be less than the declaration of the net quantity. But in case of checking the packaged commodities are the same kind and declare the different net quantity, the total of the different quantity of the packaged commodity samples must not be short (or less than zero).
- (2) The net quantity of the packaged commodity samples in individual package can not be short more than the maximum permissible errors according to the list 2 annexed to Notification of Ministry of Commerce Re Prescribe Types and Declare Quantity of the Packaged Commodities B.E. 2543 (2000).

In case the packaged commodities checking the net quantity shall be exceeding 250 packages, one sample shall be acceptable to short no more than 2 times of the maximum permissible errors.

1.6.2 Re Practice of Inspection of the declaration of the net quantity of the packaged commodities. (No. 2) B.E. 2545 (2002)

No. 3. The considerable rule of the result for checking the declaration of net quantity in Soap only shall be not only "Propriety of Central Bureau of Weights and Measures Re Practice of Inspection of the Declaration of the Net Quantity of the Packaged Commodities B.E. 2543 (2000)", but also the rule being as follows:

Prescribe the net weight of soap shall be equal to both the checking weight of soap and the given compensation rate according to list hereto annexed.

**List Annexed to Propriety of Central Bureau of Weights and Measures
Re Practice of Inspection of the declaration of the net quantity
of the packaged commodities.**

(No. 2)

B.E. 2545 (2002)

Prescribe the compensation rate of the moisture loss of soap as follows.

Soaps packed	Compensation Rate of Moisture loss % of Weight
No exceeding 15 days.	-
Exceeding 15 days to 90 days.	3
Exceeding 90 days to 180 days.	5
Exceeding 180 days to 365 days.	7
Exceeding 365 days.	8

2. Organization Responsible.

The Central Bureau of Weights and Measures under supervision of the Department of Internal Trade, Ministry of Commerce is the organization responsible for packaging control.

Future direction:

1. We have been beginning to edit the notification, in care:

1.1 Number and letter size, we will follow OIML R79 Annex B table 4

Table 4 – Minimum height of numbers and letters

Net contents (C)	Minimum height of numbers and letters in millimeters
$C \leq 50\text{g (or ml)}$	2
$50\text{g (or ml)} < C \leq 200\text{g (or ml)}$	3
$200\text{g (or ml)} < C \leq 1\text{ kg (or L)}$	4
$1\text{ kg (or L)} < C$	6

1.2 Maximum permissible errors (Tolerable Deficiencies), we will follow OIML R87 Table 2:

4.6.5 Tolerable Deficiencies

4.6.5.1 For all prepackages the tolerable deficiencies (*T*) are specified in Table 2 (see also 2.4).

Table 2 - Tolerable deficiencies in actual content for prepackages

Nominal Quantity of Product (Q_n) in g or ml	Tolerable Deficiency (T) ^a	
	Percent of Q_n	g or ml
0 to 50	9	-
50 to 100	-	4.5
100 to 200	4.5	-
200 to 300	-	9
300 to 500	3	-
500 to 1 000	-	15
1 000 to 10 000	1.5	-
10 000 to 15 000	-	150
15 000 to 50 000	1	-
^a T values are to be rounded up to the next tenth of a g or ml for Q_n less than or equal to 1 000 g or ml and to the next whole g or ml for Q_n higher than 1 000 g or ml.		
Nominal Quantity of Product (Q_n) in length		
Percent of Q_n		
Q_n of 5 m or less	No tolerable deficiency allowed	
Q_n greater than 5 m	2	
Nominal Quantity of Product (Q_n) in area		
Percent of Q_n		
All Q_n	3	
Nominal Quantity of Product (Q_n) in count		
Percent of Q_n		
Q_n of 50 items or less	No tolerable deficiency allowed	
Q_n greater than 50 items	1 ^b	
^b Compute the T value by multiplying the nominal quantity by 1 percent and rounding the result up to next whole number. The value may be larger than 1 percent due to the rounding but this is accepted because the products are whole items and cannot be divided.		

4.6.5.2 No prepackage shall have a negative error greater than twice the tolerable deficiency (T_2) specified in 4.6.5.1. (See 2.4 Inadequate prepackage and 3.3 regarding disposition of an inspection lot). ”

1.3 Expansion type of per-packaged commodities will wide.

2. We have been beginning to edit the proprieties of Central Bureau of Weights and Measures, in care:

2.1 Sampling plans; we will follow OIML R87 Table 1:

4.6.4 Inspection lot and sampling characteristics

Table 1 Sampling Plans for Prepackages

Column 1	Column 2	Column 3	Column 4
Inspection lot size	Sample Size	Sample Correction Factor *	Number of prepackages in a sample allowed to exceed the Tolerable Deficiencies in 4.6.5 (see also 2.4.1)
		$*(t_{1-\alpha}) * \frac{s}{\sqrt{n}}$	
100 to 500	50	0.379	3
501 to 3200	80	0.295	5
More than 3 200	125	0.234	7

And Inspection lot size not morn than 100 prepackages, we will get total sample inspection.

2.2 the considerable rule of the result for checking, we will use average system refer to OIML R87.

Exported Food Product

Food product is one among 5 main industrial groups. (Foods, Fashion, Auto Service, Tour and Software) The government has spent a lot of effort to develop and to export to worldwide market. Food industry has strong point both in agriculture sector and agriculture sector industry, because of expertise in producing and ability to compete efficiently.

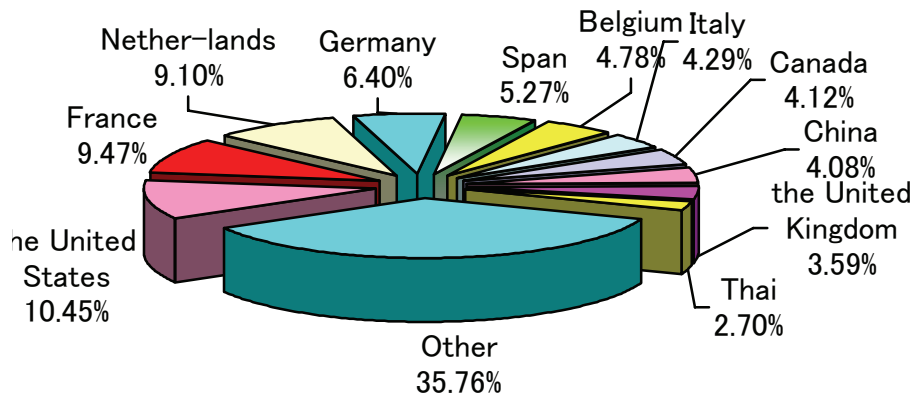
The government has strategy develop under the dream of “Kitchen of the world” with the goal as follows:

1. To be 1 of the 5 biggest foods product exporters of the world and the products are recognized as the highest confidence in safety and health
2. To increase the export of material in Thai cooking
3. Support Thai restaurant in abroad is distribute tour center, including Thai public relations to foreigner heart and distribute One Tambon One Product (OTOP)
4. Support openings Thai restaurant in abroad to push Thai restaurant service Thai taste and have international standard

Exported Foods Product

Thailand is the 14th important exporter of foods product of the world with the market share 2.70%. In the year 2003, First exported was the United States and follow by France, Nether-lands, Germany, Span, Belgium, Italy, Canada, China and the United Kingdom

Ratio exported foods product in world trade in the year 2003



Resources: Global Trade Atlas
Collect by: International Trade Information Center

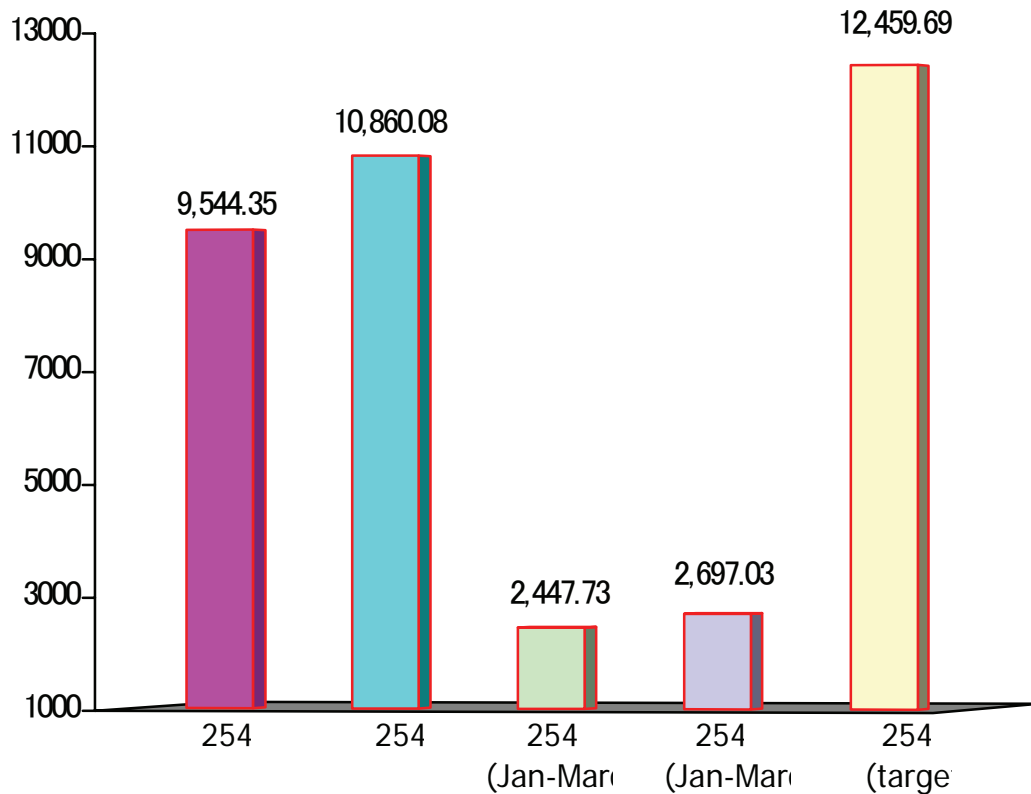
Thailand can produce foods product to best quality, which are acceptable in the world market. So many of Thai foods product can be the first exported of the world i.e. rice, canned tuna, crustacean (chilled and frozen), pineapple (canned and processed). (Data from: gtis.com/gta Jan-Mar 2004)

Export foods product of Thailand

Sum value of exported foods product was 13.50% of total exported value of Thailand, which is 10,860.08 million US dollar in the year 2003 compare with 9,544.35 million US dollar of the year 2002, which is 13.78% increase. And the first quadrant (Jan-March) of year 2004 the exported value is 2,697.03 million US dollar compare with 2,447.73 million US dollar of the year 2003 which is 10.80% increase.

Statistic of exported foods product

Value: million US dollar



Importance exported foods product market

Japan was the first exported foods market, by ratio 22% of sum value of exported foods product or 2,434.90 million US dollar in the year 2003 compare with 2,252.67 million US dollar in the year 2002, increasing 0.08%. And first quadrant (Jan-March) in year 2004 the exported value is 526.16 million US dollar compare with 530.14 million US dollar, reducing 0.75%.

Important exported food products to Japan are seafood (canned and processed), cuttlefish (chilled and frozen), fish (chilled and frozen), pet's foods, and crustacean (chilled and frozen).

The United States is the second exported foods market with the exported ratio about 17.60% of exported value of foods product or 1,906.17 million US dollar in year 2003 increasing 12.90%. And the first quadrant (Jan-March) in the year 2004 the exported value is 488.45 million US dollar compare with 431.45 million US dollar in year 2003 in the same period of time increase 13.22%.

Important exported food products to The United States are seafood (canned and processed), crustacean (chilled and frozen), fruit (canned and processed), rice, and vegetable (canned and processed).

The United Kingdom is the third exported foods market with the exported ratio about 2.83 % of exported value of foods product or 306.99 million US dollar in the year 2003 compare with 284.44 million US dollar in the year 2002 increasing 7.92%. And first quadrant (Jan-March) in the year 2004, the exported valued is 76.83 million US dollar compare with 73.64 million US dollar, increase 4.3%.

Other important-exported markets are Nether-lands, Canada, Germany and Australia.

Futures exported direction

1. It is expected that the export of food products will increase about 15% or 580,000 million Bath in the year 2004. All manufacture or exporters have high potential in many aspects such as investment, technology, management, including expertise in manufacturing process and source of best quality foods of the world. There are increasing development of exported foods product under their own Brand name. There are co-operation between government and business in policy making and problem solving.

2. At present, consumers care much about safety, health and environment protection, including the big manufacture in kind of foods have importance agricultural organic increase, particularly manufacture foods product group transmute importance for example

Unilever, Bestfoods, HJ Heinz. Have throw pubic relation for good governance and publish data agricultural organic to consumer. Expect that it has consumed agricultural organic increase. However European unions design this kind of standard to high and step to become complicated? So Thai exporter should be study and follow exchanges displace closing.

Problem and barrier to exported foods product

1. Continuous processing of agricultural system and transports to pier or factory must be developed for fast and reduce lost.
2. Some raw materials have to be imported for example tuna fish and raw material for pet's foods
3. The lack of research and development in respect of high value added product.
4. High packaging cost due to packaging material must be imported.
5. Some manufacturer or exporters have lowed skilled in export process.
6. Analysis process of exported foods before export must be done by many laboratories of many offices that consume long period of time and high cost.

In addition, at present there are expansion of bilateral trade negotiation i.e. FTA including World Bank wants developing economy to be able to export to industrial economy by acceptable standard process. Food safety is important issue which industrial economy specify the standard's themselves. So the government business and agriculturist must have a plan to cope with this situation. They must co-operate in data exchange and increasing performance of producing process. Relevant authorities must have capability and unity in food safety management, if these mechanisms do not work effectively, it can negatively affect food industry as a whole.

DIRECTORATE FOR STANDARDS AND QUALITY

STAMEQ STAMEQ --VIET NAM

Presented by: Tran Quy Giau, Eng.

Map of Viet Nam



Viet Nam

- Area: 331, 688 sq km
- Location: Viet Nam situated in South-East Asia. It borders China in the North, Lao and Cambodia in the West and look out the East sea (Pacific) in the east and the south.
- Population: 81 millions
- Capital: Hanoi

Pre-packaged Goods of Agriculture Products in Viet Nam

- Pre-packaged Goods of agriculture products subject to State management over measurement. That is listed below:
 1. Sugar;
 2. Milk;
 3. Tea, Coffee;
 4. Assorted cake, jam, candy;
 5. Edible oil, animal fat, vegetable oil;

Pre-packaged Goods of agriculture products in Vietnam

6. Instant wheat noodle, vermicelli, rice noodle, rice porridge;
7. Assorted sauces;
8. Gourmet powder;
9. Assorted dried meat;
10. Assorted nutritive farina;
11. Rice, bean, ground-nut, packed dry farm produce;
12. Animal feeds;
13. Assorted seeds.

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Pre-packaged Goods of agriculture products in Vietnam

- ◆ Pre-packaged Goods of agriculture products are not controlled by law. That is as follows:
 1. Honey;
 2. Beer;
 3. Drinks (non-alcoholic and alcoholic);
 4. Leather;
 5. Meat (processed, frozen and unprocessed);
 6. Etc.

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Outline of Vietnamese current Pre-packaged Goods position

2. Organization responsible

- ◆ Directorate for Standards and Quality (STAMEQ) is responsible for control and inspection of prepackage in whole country.
- ◆ Branches of STAMEQ in provinces are in charge of control and inspection of prepackage in their locality.

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Outline of Vietnamese current Pre-packaged Goods position

1. Legislative control for packaging

- ◆ The first Regulation on pre-packaged goods was promulgated in 1994.
- ◆ This Regulation was revised in 2002 as follows:
 - The Regulation on metrology for goods quantitatively prepackaged by weight or volume.
 - + Labeling Requirements for pre-packaged products are implemented partly compared with R79;
 - + Scope of Regulation only cover goods expressed in units of mass and volume (without linear measure or area, or count) compared with R87 ;
 - + Not deal with drained weight.

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Outline of Vietnamese current Pre-packaged Goods position

- The Technical Regulation include the sampling plans and the way of testing.
- + Tolerable Deficiency (T) =2 for $Q_n > 25\ 000$ (g or ml) compared with Table 6.2 of R87 (T=1 for Q_n from 25 000 to 50 000).
- List of pre-packed goods subject to state management over measurement;
- + Kinds of product are limited.

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Future steps adopting R87

- ◆ In 2004: Strengthening capacity for the staffs of STAMEQ and branch of STAMEQ in provinces on prepackaged goods.
- ◆ In 2005: Expanding Training Courses for Enterprises manufacturing and business on prepackaged goods.
- ◆ In 2006:
 - + Labeling Requirements for pre-packaged products are implemented fully in accordance with R79 & R87;

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Future steps adopting R87

- + Expanding Scope of Regulation that applies for goods expressed in units of mass and volume, linear measure or area, or count.
- ◆ In 2007:
 - + Dealing with drained weight;
 - + Adopting completely Table 6.2 Tolerable Deficiencies =1 for Q_n from 15 000 to 50 000 (g or ml).
- ◆ In 2008: +Expanding kinds of pre-packed goods subject to state management over measurement.
- + Prepackaged goods are implemented fully in accordance with R87.

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Acknowledgment

On behalf STAMEQ, Vietnam I would like to express my gratitude to APLMF secretariat and APEC secretariat and host country - Malaysia for their sponsorship and organizing this training Course.

Thank you for your attention !

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