



Submission to House of Representatives Standing
Committee on Agriculture and Industry
Inquiry into country of origin food labelling

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About CHOICE

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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Executive Summary:

CHOICE believes that the current framework for country of origin labelling (CoOL) on food products results in confusing and vague claims that do not provide enough information to consumers to enable them to make informed decisions about where the food they buy comes from. CHOICE's research has shown that CoOL is a priority issue for Australian consumers and the majority want to know whether food is grown or manufactured in Australia.

While intention doesn't necessarily translate into purchasing behaviour, we believe that CoOL terminology could be simplified in order to help consumers factor origin into their food purchasing decisions. CHOICE has developed a proposal to simplify food origin labelling that would remove vague and confusing claims and provide useful information about the type of products for which consumers most value origin information. By simplifying the claims framework, CHOICE's proposal would reduce the compliance burden on industry, and we believe that by facilitating informed decision-making proposal would also benefit Australia's primary production and manufacturing industries.

CHOICE recommends the establishment of a stakeholder reference group to explore options for optimising the country of origin labelling framework, including CHOICE's proposal, with a view to recommending a framework for claims that would better enable consumers to make informed decisions about the origin of the food they purchase.



Introduction:

CHOICE appreciates the opportunity to provide the following comments to the House of Representatives Standing Committee on Agriculture and Industry inquiry into country of origin food labelling.

CHOICE has a long history of advocating for effective country of origin labelling (CoOL) for food to enable Australian consumers to make informed decisions about the origin of the food they buy.

Food origin labelling is a priority issue for CHOICE members and the broader community, and CHOICE research shows that a majority of consumers want to be able to identify Australian food. Under the Food Standards Code, CoOL is required for the majority food for retail sale. However, the only guidance for companies on how to make CoOL claims is based on provisions from the general consumer law which provide safe harbours, or defences, against allegations of misleading conduct.

The result is that food origin claims are often vague and confusing. CHOICE research detailed in this submission shows that consumers have difficulty understanding these claims.

While intent to purchase Australian food does not necessarily translate into purchasing behaviour, the current CoOL framework makes it hard for the many consumers who want to purchase Australian food to make informed decisions. CHOICE believes this would have a flow-on effect for Australian primary production and manufacturing industries.

CHOICE believes improvements to the CoOL framework would help consumers make informed decisions and differentiate genuinely Australian food products from those primarily grown or manufactured overseas. With appropriate transition periods, the burden on companies would not be increased if CoOL terminology were optimised as they are already required to make origin declarations.

CHOICE has developed a simplified country of origin labelling framework that is specific to food which we published in January 2013 (see Appendix 1). We believe this proposal would substantially improve country of origin information on food products and enable consumers to make more informed decisions about where the food they buy comes from.

Our overarching recommendation is that a stakeholder reference group be established to explore options for optimising the country of origin labelling framework, including CHOICE's proposal, with a view to recommending a framework for claims that would better enable consumers to make informed decisions about the origin of the food they purchase.

In this submission we address the five terms of reference established by the House of Representatives Standing Committee on Agriculture and Industry and provide further detailed recommendations that would improve the state of country of origin labelling for Australian consumers.



1.1. Terms of Reference:

TOR 1: Whether the current Country of Origin Labelling (CoOL for food) system provides enough information for Australian consumers to make informed purchasing decisions

Consumer concern around food CoOL

CHOICE surveys consistently show that food origin labelling is a priority concern for Australian consumers. For example, improved country of origin labelling was the number one issue for respondents in CHOICE's 2013 Pre-Election Survey.¹ And when it comes to the value consumers place on different aspects of food labelling, CoOL is very important and second only to the actual ingredients contained in the food.

A 2012 CHOICE member survey on CoOL found that for the vast majority of respondents, it is very important to be able to identify Australian food,² and that knowing where food is manufactured is almost as vital as knowing where it is grown:

- 84% of respondents said it was either crucial or very important to know if food was **grown in Australia**; and
- 80% said it was crucial or very important to know if food was manufactured in Australia.

CHOICE recognises that intention does not necessarily translate into purchasing decisions. Our 2012 survey reflected this with the majority of respondents saying they try to buy Australian food but their decision depends on other factors like the type of food and price.

Lack of clarity in food CoOL

While consumers place considerable importance on CoOL, origin claims are often vague and confusing. In fact, the Australian Competition and Consumer Commission (ACCC) has stated that the most common complaints about country of origin claims are that the claims are unclear.³

CHOICE's research shows that while many consumers do not think there is enough information about food origin, the bigger issue is clarity of information. CHOICE's 2012 survey found that:

- Around half of respondents said there was enough information about the origin of the food they buy;
- While just 10% said information about food origin was clear and easy to understand.

¹ CHOICE's 2013 Pre-Election Survey was completed in March-April 2013 by 3,879 CHOICE supporters.

² CHOICE's 2012 Country of Origin Labelling Survey was completed in October 2012 by 743 CHOICE supporters.

³ Australian Competition and Consumer Commission *Country of origin claims and the Australian Consumer Law: A guide for business* (2014).



The lack of clarity in CoOL makes it difficult for consumers to make informed decisions about the food they buy.

Consumer confusion around meaning of food origin claims

CHOICE believes the lack of clarity in CoOL causes consumer detriment by preventing the vast majority of consumers who want to know if food is Australian from making an informed decision. While consumers may ultimately decide against an Australian product, for example if an alternative is cheaper or perceived to be of better quality, CHOICE believes consumers have the right to make informed decisions about where the food they buy comes from.

CHOICE's research has shown that consumers have considerable difficulty interpreting common CoOL claims, with our 2012 survey showing respondents had very varied interpretations of these claims. The most concerning finding was that a third of respondents incorrectly believed that a 'Made in Australia' claim meant the ingredients are Australian (when in fact the claim is about the location of manufacturing).

In CHOICE's view, the qualified 'Made in Australia from local and imported ingredients' type of claim is another serious problem in CoOL. While we don't have quantitative research on this point, anecdotally we find this is to be the greatest frustration for consumers when it comes to CoOL. These claims are vague and provide no information about which ingredients are Australian or where the imported ingredients are from. In CHOICE's view, this type of claim does not provide more valuable information than the unqualified 'Made in Australia' claim.

Further, CHOICE is concerned that many companies may be using the 'local and imported ingredients' type of claim to water down the requirements of the strict 'Made in Australia' claim. This is because until recently, the ACCC's industry guidance stated that companies unable to meet the requirements of the 'Made in Australia' claim could make a qualified claim like 'Made in Australia from local and imported ingredients'.⁴

We note that in a recently released updated version of *Country of origin claims and the Australian Consumer Law*, the ACCC has left out this statement.⁵ However, we are concerned that it will take time for this interpretation to be absorbed by companies and labelling updated accordingly, and in the meantime consumers may be misled by companies relying on the old interpretation.

CHOICE believes that the lack of clarity in CoOL not only causes consumer detriment by hindering informed decision-making and potentially misleading consumers, but also has implications for Australia's primary production and food processing industries. While it is clear that the strong interest in knowing whether food is made or grown in Australia doesn't always translate into purchasing behaviour, CHOICE believes that the current state of labelling is so poor that consumers are often unable to factor origin into their purchasing behaviour.

⁴ Australian Competition and Consumer Commission *Country of origin claims and the Australian Consumer Law: A guide for business* April (2011).

⁵ Australian Competition and Consumer Commission *Country of origin claims and the Australian Consumer Law: A guide for business* (2014).



TOR 2: Whether Australia's CoOL laws are being complied with and what, if any, are the practical limitations to compliance

General compliance issues

CHOICE does not have evidence on the level of compliance with Australia's CoOL laws. However, we believe it is likely that there are compliance issues for two reasons. Firstly, we have been told that many companies find the CoOL terminology framework confusing. Secondly, the Australian Competition and Consumer Commission has recently changed the interpretation of 'Made in Australia from local and imported ingredients'-type claims in its industry guidance material.

In the 2011 version of *Country of origin claims and the Australian Consumer Law*, the ACCC stated that companies unable to meet the requirements of the 'Made in Australia' claim could make a qualified claim like 'Made in Australia from local and imported ingredients'. However, in the 2014 version, there is no reference to qualified claims and the ACCC has removed the statement that companies may use qualified claims where they do not meet the 'Made in Australia' requirements. Instead, the ACCC states "A 'Made in Australia from local and imported ingredients' claim must not be misleading. The provision of extra information beyond 'Made in Australia' should clarify the origin of the components and not confuse consumers."

While CHOICE welcomes the ACCC's change in interpretation, we are concerned that it will take time for this interpretation to be absorbed by companies and labelling updated accordingly, and in the meantime consumers may be misled by companies relying on the old interpretation.

Compliance and imports from New Zealand

CHOICE is aware that there have been suggestions from some industry representatives that vegetables grown in China are being repackaged in New Zealand and imported into Australia bearing the 'misleading' claim of 'Made in New Zealand from local and imported ingredients'.

CHOICE assumes these representatives have evidence the claims are misleading - that is, that the proportion of New Zealand ingredients is minimal or non-existent, or the 'Made in' requirements are not met. We think this evidence should be provided to the ACCC so that any appropriate investigation and enforcement action can be taken.

However, if ingredients from China are being mixed with ingredients from New Zealand, and the requirements for 'Made in' are met, we do not believe the 'Made in New Zealand from local and imported ingredients' claim is any more problematic than the 'Made in Australia from local and imported ingredients' claim.

In any case, CHOICE believes that the qualified 'local and imported ingredients' type claims are vague and confusing for consumers and should not be allowed because they do not help consumers to make informed decisions (see CHOICE's proposal for a simplified approach to COOL in Appendix 1).



TOR 3: Whether improvements could be made, including to simplify the current system and/or reduce the compliance burden

CHOICE believes improvements could be made to simplify the current CoOL system and we released a policy proposal in January 2013 that we believe would simplify and improve the current CoOL framework, in turn reducing the compliance burden for industry. We have provided this proposal in Appendix 1.

CHOICE's proposal is informed by our research into the type of food products for which consumers most value origin information. Our 2012 survey asked consumers about the importance of origin information for a range of product types. The results show that origin is crucial for the majority of respondents for primary produce but the level of importance drops as the food types become more heavily processed:

- More than two-thirds of respondents said country of origin is crucial for fresh meat, seafood and fresh fruit vegetables;
- Half or more of respondents said country of origin is crucial for dairy products and processed meat products;
- For juice, over 40% of respondents said country of origin is crucial;
- Over a quarter said country of origin is crucial for bread, cereal and pasta, and canned and frozen food; and
- 17% said country of origin was crucial for snack foods, and the percentage was even lower for soft drinks at 15% and just 13% for confectionery and chocolate.

CHOICE's policy proposal therefore focuses on premium claims that would improve the quality of labelling for the product types for which consumers most value origin information while providing a broad claim for products for which it is difficult to make a premium claim.

Our proposal recommends that country of origin claims be restricted to three tiers:

- A premium claim about where the ingredients are from and where processing was done, like 'Product of Australia' or 'Australian produce'.
- A premium claim about where manufacturing is done, like 'Manufactured in Australia' (based on the current 'Made in Australia' tests and using consumer research to inform the choice of word to replace 'Made' to ensure consumers do not believe the claim relates to Australian produce).
- A broad claim to cover foods which don't meet the requirements for the premium claims, like 'Packaged in Australia', intended to cover highly processed products with inputs and ingredients from a range of countries for which making a premium claim can be difficult.

Importantly, CHOICE's proposed approach would prohibit the use of the 'local and imported ingredients' type qualifications. Instead, the approach would encourage - but not mandate - the provision of specific origin information about specific ingredients, eg 'Made in Australia with Australian milk'.



CHOICE consulted with key industry groups in developing this proposal and we believe that if it were implemented, it would not increase the burden on food companies, provided there was an appropriate transition period. Food companies are already required to declare origin and CHOICE believes that by simplifying the claims framework, our proposal would in fact reduce the compliance burden if implemented.

TOR 4: Whether Australia's CoOL laws are being circumvented by staging imports through third countries

CHOICE is not aware of any evidence that Australia's CoOL laws are being circumvented by staging imports through third countries. We strongly believe that if there is evidence that this is occurring, it should be provided to the regulator and appropriate enforcement action should be taken.

CHOICE assumes this refers to suggestions raised by some industry groups that misleading claims are being made on products imported via New Zealand, specifically with Chinese ingredients (see comments in relation to ToR 2).

CHOICE recommends that the Inquiry seek expert advice on the implications of the Trans-Tasman Mutual Recognition Arrangement for CoOL. It is CHOICE's understanding that the arrangement means that while food may be imported through New Zealand and sold in Australia without an origin declaration, because New Zealand does not have mandatory CoOL, this would not mean that food may be imported from New Zealand with origin claims that are misleading, such as 'Made in New Zealand from local and imported ingredients' or 'Product of New Zealand' on products with minimal or zero New Zealand ingredients that do not meet the 'Made in' requirements.

TOR 5: The impact on Australia's international trade obligations of any proposed changes to Australia's CoOL laws.

CHOICE recommends that the Inquiry seek expert advice on this question. However, we note that Australia already mandates country of origin labelling for the majority food for retail sale. Our proposals are intended to optimise and in fact simplify the way origin is declared on food products rather than to impose additional burdens or require additional information about the origin of food products.



Appendix 1: CHOICE's proposed approach to simplify country of origin labelling

Food origin labelling - a simplified approach

Country of origin labelling is mandatory for almost all food sold in Australia and many consumers feel strongly about where the food they buy comes from. However, there are problems in the framework governing food origin that result in confusing and vague labelling. CHOICE's proposed reforms would restore meaning in country of origin claims while restricting the ability to promote dubious links to Australian-ness through qualified claims.

Our reforms would permit claims that tell consumers where ingredients are from, as well as claims that tell consumers where food products are manufactured, because consumers are interested in the origin of both ingredients and manufacturing.⁶ CHOICE has consulted with key industry stakeholders to ensure that our reforms are practical and reasonable.

CHOICE recognises that many consumers care about where their food comes from, but origin labelling is valued on some foods more than others⁷ - consumers care most about origin for primary produce, followed by minimally processed food. However, origin is generally not felt to be crucial for highly processed food. CHOICE's reforms prioritise the information consumers value most, while offering a practical labelling option for products with multiple ingredients from different countries.

Proposed simplification

CHOICE's reforms simplify origin labelling to three tiers of claim:

1. Premium claims about where the ingredients are from, like 'Product of Australia' or 'Australian produce'.
2. Premium claims about where manufacturing was done, like 'Manufactured in Australia'.
3. Broad claims to cover foods which don't meet the requirements for the premium claims, like 'Packaged in Australia'.

We provide suggested wording, but recommend the exact wording for each claim be developed in consultation with industry and through consumer testing.

Tier 1 - eg 'Product of' - would be used for primary produce like meat and vegetables and also processed food where a high standard is met. CHOICE considers the current definition of 'Product of' is adequate, requiring both significant ingredients and virtually all processing to be from the country claimed.

Tier 2 - eg 'Manufactured in' - relates solely to manufacturing and can only be used where a high standard is met. CHOICE considers the current definition of 'Made in' is adequate, requiring not only that 50% of the processing costs be incurred in the country claimed but also that substantial transformation take place there.

⁶ CHOICE member survey, October 2012.

⁷ CHOICE member survey, October 2012.



Tier 3 - eg 'Packaged in'- also relates solely to manufacturing and can be used where a product doesn't meet the standards required for the premium claims. One example is a chocolate biscuit made with numerous ingredients and inputs from multiple companies, making it difficult to isolate a single ingredient or manufacturing origin. Another example is a frozen vegetable mix with some imported vegetables, meaning the requirements for 'Product of' can't be met, and although it is chopped and frozen in Australia, the substantial transformation test isn't met.

Qualified claims

Importantly, CHOICE's reforms would not allow the two manufacturing claims to be qualified with vague information about ingredients like 'from local and imported ingredients'. Instead, qualification would only be allowed for a characterising⁸ ingredient or ingredients and where the country of origin is specified. This would be useful for products like the above-mentioned frozen vegetables, which could state 'Packaged in Australia with Australian carrots and peas'.

Legislative arrangements

Once the wording of the claims is agreed, legislative changes would be needed to create a food-specific country of origin labelling standard, either within the Food Standards Code or the Australian Consumer Law. It would use the current safe harbour provisions for 'Product of' and 'Made in' claims and create a new definition for the broad claim. These definitions would give industry certainty and help companies make meaningful claims about origin.

Consumer education

A key advantage of simplifying the claims about origin is that a consumer education campaign is more likely to be successful. CHOICE believes the current approach with its plethora of claims is so confusing that consumer education is unlikely to be effective. In contrast, our proposed approach allows for clear and simple messages for consumers who want to support Australian farmers and manufacturers:

- *The best claim you can look for is 'Product of Australia' - this tells you the ingredients and processing are Australian.*
- *The next best option is 'Manufactured in Australia', which at least tells you that a considerable amount of work has been done here to produce the product - but don't assume the ingredient are Australian, unless additional information says so.*

Under CHOICE's proposed reforms, consumers would be better able to make decisions about where food comes from, improving confidence in Australian claims. In addition to the consumer benefit, Australian growers and manufacturers are likely to benefit from improved recognition of genuinely Australian products.

⁸ As defined in Standard 1.2.10 of the Food Standards Code: *a characterising component means a component of a food that (a) is mentioned in the name of a food; or (b) is usually associated with the name of a food by the consumer; or (c) is emphasised on the label of a food in words, pictures or graphics.*