



Standing Committee on Agriculture and Industry Inquiry into Country of Origin Labelling

The NSW Food Authority (the Authority) is grateful for the opportunity to provide input into the House of Representatives Standing Committee on Agriculture and Industry's inquiry into Country of Origin Labelling with respect to food.

The Authority's submission is structured to address the questions outlined in the review's terms of reference.

Food labelling and role of the NSW Food Authority

The Authority has a primary responsibility for monitoring Country of Origin Labelling (CoOL) compliance with respect to food in NSW.

Food offered for sale in Australia must be labelled in accordance with the Australia New Zealand Food Standard Code (Code), including CoOL requirements detailed in Standard 1.2.11 - Country of Origin Labelling (see Attachment 1). Requirements in the Code, including food labelling, are intended to ensure food is safe and suitable, that food is properly described, correctly and truthfully labelled, and that food can be traced and if necessary recalled if problems arise.

Standard 1.2.11 prescribes CoOL requirements in relation to packaged foods and to unpackaged fish, pork, fruit and vegetables, beef, veal, lamb, hogget, mutton, chicken and any mixture of these foods offered for sale in Australia (but not New Zealand).

The Code is applied nationally under the auspices for the food regulation agreement. The Authority is the regulatory agency responsible for ensuring compliance with the *Food Act 2003* (see Attachment 2), section 21 of which applies the Code within NSW. In addition to food safety compliance, section 18 of the *Food Act 2003* aims to prevent misleading or deceptive conduct in relation to food offered for sale which includes claims made about food products on labels, packaging and advertising.

By imposing CoOL requirements on food offered for sale in Australia, the Code also effectively calls up the broader truth in labelling requirements that apply under Australian Consumer Law (ACL). The ACL provides regulatory certainty for businesses through 'safe harbour' provisions for CoOL claims where the product has been substantially transformed in the country to which the CoOL relates and more than 50 percent of total production costs occur in that country.

The ACL is enforced by the Australian Competition and Consumer Commission (ACCC) at the national level and NSW Fair Trading at the NSW level.

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

As outlined previously, the Code requires all packaged and unpackaged food to include information about the country of origin. The current CoOL framework recognises the contribution of local production and manufacturing as well as the origin of food product ingredients. As indicated, this



is intended to provide regulatory certainty for manufacturers while also allowing consumers to make informed choices about food they purchase.

Where a product is unprocessed or in its natural state, the Authority considers that CoOL requirements are adequate and provide consumers with appropriate information about country of origin. For example, seafood or fruit and vegetables need to have a clearly identifiable place of origin and these claims are relatively easy to substantiate.

However, in relation to unpackaged items, there can be ambiguity for consumers where these items are displayed as a mixture of local and imported ingredients.

The Authority acknowledges that contention exists regarding lack of clarity and ambiguity conveyed by some claims relating to "Made in/Packed in Australia", particularly when combined with qualifying claims such as "from local and imported ingredients". The application of these CoOL claims for packaged or processed foods can be open to broad interpretation and can also be difficult to verify, especially where a product contains many ingredients sourced from a number of countries.

As indicated, it can be more difficult for consumers to accurately identify and verify the appropriate origin of manufactured products that contain ingredients from a number of countries. For example manufactured products such as canned fruit or fruit juice that may claim to be "Made in Australia" which refers to the manufacture/ production of the product rather than the actual content of the food, even though the significant ingredient may be imported fruit juice concentrate or fruits. In these situations the key consumer and Australian agricultural industry interest is that the key ingredient is imported juice or fruit whereas this information is not clearly conveyed by the existing CoOL framework.

Use of "local and imported" statements have the potential to create ambiguity. For example, where an imported product such as seafood is marinated with locally produced sauce and sold as "Made in Australia from local and imported ingredients". Additionally, smallgoods and hams made predominantly from imported pork but containing minor local ingredients can be labelled as "Made in Australia from local and imported ingredients". This situation can also arise in relation to mixed products where there is no requirement to list ingredients in order based on their proportion in the mix. Other examples include mixtures of nuts and/or dried fruits with minimal local content.

The needs of consumers and Australian primary industries in relation to "Made in/Packed in" claims may be better met if the country of origin labelling framework required the key ingredient(s) to be more clearly characterised. Using the previous pork example, "Made in Australia from imported pork" rather than "Made in Australia from local and imported ingredients".

There is a need for better guidance in relation to these more contentious or ambiguous CoOL claims to increase both consumer understanding and industry awareness. The ACCC document "Country of Origin claims and the Australian Consumer Law" has recently been developed and will assist greatly in this regard.



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

Compliance with CoOL requirements

The Food Authority views compliance with the current CoOL framework as generally good and the majority of problems reflect ignorance or inadequate compliance systems rather than deliberate labelling breaches. The Authority considers that compliance with CoOL requirements needs to be supported with both education and appropriate enforcement action where necessary.

Since its establishment in April 2004, the Authority has routinely monitored food industry compliance with requirements of the Food Standards Code, including CoOL, through audits and inspections, particularly of seafood and fruit and vegetable retailers. The Authority supports compliance with CoOL requirements by conducting annual market surveillance projects to check compliance and inform retailers and manufacturers of their obligations in this area.

The Authority has found that food industry compliance is generally good but there have been issues relating to lack of understanding or confusion about CoOL requirements. The Authority also found that despite the potential commercial motivation for substitution, few large scale blatant instances of substitution were identified although the Authority has identified and successfully prosecuted one significant case where imported product was sold as Australian.

Areas requiring regulatory activity have included seafood product substitution, products displayed without appropriate CoOL labelling and the use of imported ingredients (pork) in products labelled as "Product of Australia". The most common issues include display of fresh produce without appropriate labelling and missing or incorrect labelling on packaged food.

The current CoOL framework for fruit and vegetables generally provides consumers with sufficient information about country of origin. One issue that the Authority has encountered arises from consumer demand for year round access to produce and resulting pressure at the start and finish of growing seasons when retailers have limited access to local produce and sometimes offer imported goods using the descriptor "contains a mixture of local and imported", but upon investigation no local produce is actually offered for sale.

While the "mixture of local and imported" approach appropriately covers products like seafood marinara or mixed nuts which may contain ingredients from a number of countries and where the product can only be purchased as a quantity of the mixture, not as individual items. However the Authority has taken enforcement action with retailers where this approach has been used for products that are usually purchased as individual items and could therefore be offered separately. For example, mixing end of season Australian lemons with new season USA lemons and offering these as a mixture of local and imported lemons.

Another area where the Authority has occasionally needed to take enforcement action is where imported product is displayed in close proximity to signage that may imply Australian origin e.g. 'good for Aussie farmers'. The Authority recognises the pressures on retailers to offer product throughout the year but also the desire of consumers and Australian primary industries to ensure that Australian produce can be identified.



The Authority has undertaken prosecutions and issued penalty notices in relation to significant offences including false descriptions, misleading claims and lack of signage required for food product displays. It is noted that these problems often reflect a lack of understanding about CoOL requirements and/or lack of effective systems to ensure compliance rather than a deliberate intention to mislead consumers.

The need to have both an educative approach to raise business awareness in tandem with appropriate enforcement action where required underpins the Authority's approach to CoOL compliance. For example, the Authority has previously undertaken projects with market retailers in Sydney to evaluate CoOL compliance and help retailers meet requirements through measures to improve awareness of CoOL requirements. The Authority will soon undertake another of these projects in Sydney and will also determine where these retailers source their produce.

It is important to point out that while the Authority's investigation and enforcement efforts include compliance with CoOL requirements, these can be resource intensive operations and as such they need to be carefully prioritised against overarching food safety priorities in terms of resource utilisation. Accordingly, the Authority notes that the emphasis given to CoOL compliance varies between jurisdictions.

Practical compliance limitations - Mixed and processed foods

It can be difficult to investigate and therefore enforce "Made in" or "Packed in" claims that involve a combination of local and imported ingredients and particularly where the right to make these claims is also based in part on the proportion of total production costs. The Authority acknowledges the complexities that industry also faces in relation to these claims. The ACCC recently released guidance on what components contribute to the cost of production and this should assist compliance investigations as well as business awareness in this regard.

Verifying these claims based on the voluntary ACL safe harbour provisions involves detailed auditing and for some products can involve costs of all inputs along with the value of local and imported raw ingredients. The Authority's experience with investigations of this type is that they are extremely complex, lengthy and expensive.

It is relatively easy to assess compliance with "Product of/Grown in" claims for products that are grown and manufactured in the same country. While the Code does not define these terms, the ACL sets out criteria which provide guidance for businesses in relation to these claims.

Practical compliance limitations - Unpackaged meat products

Prior to July 2013, CoOL requirements already applied to unpackaged fruit, vegetables, pork, and seafood. An overarching review of food labelling law and policy (Blewett - *Labelling Logic*) recommended extending CoOL requirements to all primary food products and CoOL requirements were extended to unpackaged beef, sheep and chicken meat on 18 July 2013. This occurred even though the only meat imported in any significant quantity is pork and this is processed into ham or smallgoods prior to sale. The overwhelming majority of unpackaged raw meat sold in retail outlets is therefore produced in Australia. Extension of CoOL requirements to products that are not currently imported created a regulatory impost on meat retailers.



In order to minimise this regulatory impost, meat retailers have been given an option to comply by displaying a single statement such as "all meat sold in this premises is from Australian producers". However, this approach has the potential to raise issues under the ACL if the retailer also offers processed meats or other value added products made from imported ingredients such as pork. Meat retailers must therefore be aware that additional signage is required where products are offered that contain imported ingredients.

The Authority supports a single country of origin statement as a compliance option for meat retailers where raw meat displayed for sale has been produced in Australia and the Authority has been working to develop an appropriate statement that could be used on a single sign. The Authority also understands that the ACCC's revision of its CoOL guidance document may affect the wording of the single statement and related guidance material. Therefore it is vital that where possible the requirements of the ACL and the Food Standards Code align to provide certainty for businesses.

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

In the Authority's view, there are a number of improvements that can be made to simplify the system and reduce the compliance burden.

As indicated, the needs of consumers and Australian primary industries could be better met if the CoOL framework required the key ingredient(s) to be more clearly characterised. Where a product is based on a mixture of local and imported ingredients or significant transformation of principally imported ingredients, then it may be helpful for the CoOL framework to target 'significant ingredients' or 'principal components' of the food. This could include requiring the origin of any key imported ingredients such as pork, fruit juice concentrate or nuts to be identified as imported. It could also include changing the order of the mixed product claim to reflect the origin of the main ingredient(s).

The requirements for unpackaged foods could be clarified to ensure that CoOL requirements for "mixed foods" is only available for foods that are ordinarily displayed and sold as a mix and not to a mix of foods where individual food items would be usually be selected and purchased separately (e.g. imported lemon example above).

The Authority notes the Australian Food and Grocery Council's (AFGC) position, regarding the complexity of the current CoOL framework for manufacturers. The Authority supports consideration of options to simplify CoOL requirements and reduce compliance burdens, and to provide for CoOL claims to better reflect consumer language and expectations.

Standard 1.2.11 of the Food Standards Code needs to align seamlessly with the ACL requirements and definitions.

The CoOL framework would also benefit from measures such as education and communication campaigns, to improve food business and consumer understanding of CoOL requirements and how to understand what these mean.



Whether Australia's CoOL laws are being circumvented by staging imports through third countries;

The Authority is not in possession of evidence that provisions of the Codex Alimentarius (Codex) are being used to systematically circumvent Australian CoOL requirements for food.

The Codex contains the international standards dealing with the production and safety of food and as such is the international context for the Food Standards Code. The Codex provides that where food from one country is processed in another country in a way which substantially changes its nature, then the country where it was processed is regarded as the country of origin.

It is noted however that Australia's CoOL requirements differ from some trading partners. For example, food offered for sale in New Zealand is not required to display where its ingredients originate but any CoOL claim that is made must comply with New Zealand consumer laws. Packaged food must also display contact details for the relevant New Zealand distributor or manufacturer. Trans-Tasman mutual recognition arrangements provide that, with few exceptions, goods that may be legally offered for sale in New Zealand, may also be offered for sale in Australia.

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

The Authority notes the need to ensure that any changes which may be proposed for CoOL requirements do not have any direct or unintended consequences in relation to our international trade obligations.



Attachment 1. Australian Food Standards Code

<http://www.comlaw.gov.au/Details/F2013L00051>



Standard 1.2.11 – Country of Origin Labelling

The Board of Food Standards Australia New Zealand gives notice of the making of this Standard under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on 18 July 2013.

Dated 7 January 2013

Standards Management Officer

Delegate of the Board of Food Standards Australia New Zealand

STANDARD 1.2.11

COUNTRY OF ORIGIN LABELLING

(Australia only)

Purpose and commentary

This Standard sets out the requirements for country of origin labelling for packaged foods and certain unpackaged foods. These requirements do not apply in New Zealand.

Table of Provisions

- 1 Application
- 2 Country of origin labelling for packaged food
- 3 Country of origin labelling for certain unpackaged food

Clauses

1 Application

- (1) This Standard does not apply to a food that is offered for immediate consumption where the food is sold by –
- (a) restaurants; or
 - (b) canteens; or
 - (c) schools; or
 - (d) caterers or self-catering institutions; or



- (e) prisons; or
- (f) hospitals; or
- (g) other similar institutions listed in the Table to clause 8 of Standard 1.2.1.

(2) Subclause 1(2) of Standard 1.1.1 does not apply to this Standard.

2 Country of origin labelling for packaged food

(1) Subclause (2) applies to food in a package.

(2) The food must be labelled with –

- (a) a statement on the package that identifies the country where the food was made, produced or grown; or
- (b) a statement on the package –
 - (i) that identifies the country where the food was manufactured or packaged; and
 - (ii) to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients.

(3) However, subclause (4) applies to food in a package if –

- (a) the food is unprocessed fruit and vegetables, whether whole or cut; and
- (b) the food is displayed for retail sale; and
- (c) the package does not obscure the nature or quality of the food.

(4) The food must be labelled with a statement on the package or in connection with the display of the package which –

- (a) identifies the country or countries of origin of the fruit and vegetables; or
- (b) indicates that the fruit and vegetables are a mix of local and imported foods; or
- (c) indicates that the fruit and vegetables are a mix of imported foods.

3 Country of origin labelling for certain unpackaged food

(1) Food listed in the Table to this subclause that is displayed for retail sale other than in a package must be labelled with a statement on or in connection with the display of the food which –

- (a) identifies the country or countries of origin of the food; or
- (b) indicates that the food is a mix of local and imported foods; or
- (c) indicates that the food is a mix of imported foods.

Table to subclause 3(1)

Column 1	Column 2
Item	Food
1	Fish, including fish that has been mixed or coated with one or more other foods
2	Pork
3	Fruit and vegetables
4	Beef
5	Veal
6	Lamb
7	Hogget
8	Mutton
9	Chicken
10	A mix of foods mentioned in this Table

(2) In this clause, a food listed in Column 2 of the Table to subclause 3(1) includes a food that has been –

- (a) cut, filleted, sliced, minced or diced; or
- (b) pickled, cured, dried, smoked, frozen or preserved by other means; or

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- (c) marinated; or
- (d) cooked.

(3) In addition to the requirements of Standard 1.2.9, the statement required by subclause (1) must be at least 9 mm in height, unless the food is in a refrigerated assisted service display cabinet, in which case it must be at least 5 mm in height.

Attachment 2. NSW Legislation referred to in this submission

Food Act 2003 No 43

18 Misleading conduct relating to sale of food

(1) A person must not, in the course of carrying on a food business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to the advertising, packaging or labelling of food intended for sale or the sale of food.

(2) A person must not, for the purpose of effecting or promoting the sale of any food in the course of carrying on a food business, cause the food to be advertised, packaged or labelled in a way that falsely describes the food.

Note. Examples of food that is falsely described are contained in section 22.

(3) A person must not, in the course of carrying on a food business, sell food that is packaged or labelled in a way that falsely describes the food.

Note. Examples of food that is falsely described are contained in section 22.

(4) Nothing in subsection (2) or (3) limits the generality of subsection (1).

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

Note. An offence against subsection (1), (2) or (3) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

21 Compliance with Food Standards Code

(1) A person must comply with any requirement imposed on the person by a provision of the Food Standards Code in relation to the conduct of a food business or to food intended for sale or food for sale.

(2) A person must not sell any food that does not comply with a requirement of the Food Standards Code that relates to the food.

(3) A person must not sell or advertise for sale any food that is packaged or labelled in a manner that contravenes a provision of the Food Standards Code.

(4) A person must not sell or advertise for sale any food in a manner that contravenes a provision of the Food Standards Code.

(5) This section does not require compliance with a provision of the Food Standards Code in relation to the conduct of a food business that is primary food production unless a food safety scheme provides that the provision applies to the food business or to a class of food businesses that includes the food business concerned.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

Note. An offence against subsection (1)–(4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.