

EXECUTIVE OFFICE



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

Contact officer:
Contact phone:

www.accc.gov.au

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Mr
Inquiry Secretary
Standing Committee on Agriculture and Industry

Sent via email to

Dear Mr

Questions on notice arising from the Inquiry into Country of Origin Food Labelling

I refer to your correspondence of 24 July 2014 to the Australian Competition and Consumer Commission (ACCC) providing questions on notice arising from the Standing Committee on Agriculture and Industry's Inquiry into Country of Origin Food Labelling.

The ACCC's response to the questions raised by the Committee is provided at Attachment A.

Should you wish to discuss this matter further please do not hesitate to contact me on

Yours sincerely

Director
Executive Office

Attachment A

- 1. Throughout its inquiry the Committee has heard allegations of food imports being staged in third countries before arriving in Australia, with the objective of circumventing Australian laws. Has the ACCC received any evidence of such practices or conducted any inquiries as recommended by previous Parliamentary inquiries?**

Businesses may make any origin claim provided that it is not false, misleading or deceptive. This applies generally to all products being sold in Australia irrespective of where they come from.

The ACCC understands that the Committee has heard allegations that food may be imported through New Zealand and be sold in Australia with no country of origin claim at all or that food may be imported into New Zealand, repackaged and exported to Australia for sale but labelled 'Made in New Zealand'. It is not entirely clear to the ACCC how the concerns of regulatory gap might arise in circumstances where both Australian and equivalent New Zealand laws both prohibit false or misleading representations.

The ACCC notes the Senate Select Committee on Australia's Food Processing Sector recommendation that the ACCC investigate claims, when presented with direct evidence, that country of origin labels on processed foods imported into Australia under free trade and other international agreements are misleading. The ACCC has received a very small number of contacts about this issue. Those contacts were considered by the ACCC although not pursued due to insufficient evidence of a breach of the law.

- 2. Does the ACCC have responsibility to provide discernible information to consumers? How is this information developed? Is it reviewed to track its progress or impact among the target audience?**

The ACCC consults with relevant consumer and industry groups in developing guidance material. The ACCC consulted extensively with industry in the development of the revised country of origin business guidance. Where resourcing and funding allows for it, focus group testing is also carried out to test the effectiveness of any tools in resonating with the target audience. Further to this, where possible the ACCC will also undertake some 'before and after' benchmark testing to provide a method of comparison of any change in levels of consumer or business awareness and the effectiveness of the information.

The ACCC also conducts regular reviews of its information material, including web and publications to ensure it is up to date with relevant laws and meets consumer and business expectations.

3. The Committee has heard that not only are consumers confused but also food producers and manufacturers. What guidance is developed, and what campaigns have been established to educate and guide those food producers?

There are a number of laws other than the Australian Consumer Law (the ACL) that impose labelling requirements for food products in particular circumstances. As such, there are a number of other agencies, including government and private industry groups that have developed guidance in relation to food labelling issues. The ACCC's work in relation to food labelling is directed at educating and enforcing the ACL as set out below.

Guidance material

The ACCC has worked with state and territory consumer agencies, government agencies and industry to provide guidance to increase consumer awareness and inform businesses of their obligations under the ACL when making country of origin claims, specifically:

- i. October 2012 consumer guidance: *Where does your food come from?*
- ii. December 2012 consumer guidance: *'My shopper'* smart phone application
- iii. April 2014 updated business guidance: *Country of origin claims and the Australian Consumer Law.*

In relation to the business guidance, the ACCC conducted extensive consultation with members of a National Working Group of Commonwealth Government agencies on country of origin labelling, state and territory agencies and a number of industry stakeholders in the development of this revised guidance for businesses. Meetings were also held with several of these groups, including representatives of the food industry to discuss their views.

Australian Consumer Law Regulators joint enforcement activity – national project

From December 2012 to January 2013, under the auspices of the Australian Consumer Affairs Ministers, the ACCC and state and territory agencies also undertook a joint enforcement project in relation to country of origin food representations which involved market surveillance and issuing substantiation notices. This project identified limited examples of consumer detriment arising from misrepresentations regarding the origin of food in Australia. Consumer Affairs Ministers considered the ACL to be effective in dealing with misleading or deceptive labelling and agreed that food claims representations be taken as a business-as-usual approach.

Enforcement matters

The ACCC has actively enforced compliance with consumer law protections to address false, misleading or deceptive claims in relation to country of origin and place of origin. This is important for specific and general deterrence and setting an expectation of industry behaviour.

4. Is the educative role a shared responsibility of the ACCC and its state/territory counterparts?

The ACL is a single national consumer law that is enforced by the ACCC, with state and territory consumer agencies (ACL regulators). This responsibility includes educating businesses and consumers about their rights and obligations.

National education and compliance campaigns are conducted together with the other ACL regulators. This includes the country of origin labelling national project that took place over 2012-13.

The ACCC's guidance on country of origin labelling for businesses was developed in consultation with an intergovernmental National Working Group chaired by the Department of Industry and Treasury, and including the Australian Customs and Border Protection Service, the Department of Agriculture, the Department of Health, the Department of Foreign Affairs and Trade and Food Standards Australia New Zealand and also involved engagement with a number of industry groups and other ACL regulators to promote the delivery of co-ordinated and consistent messaging by all agencies.

5. The ACCC Guidance material that was released in April 2014 has cast doubt on the ability of food producers to label their products with 'made in... from local and imported ingredients'.

- **Could the ACCC clarify for the record what the legal status of this claim is?**
- **Many companies use this classification on their labels. Has the ACCC received feedback or questions from industry?**

Food producers may label products 'Made in Australia from local and imported ingredients'.

The ACCC's guidance to business, *Country of origin claims and the Australian Consumer Law*, outlines that a 'Made in Australia from local and imported ingredients' claim must not be misleading and the provision of information beyond 'Made in Australia' should clarify the origin of the components and not confuse consumers.

The ACL does not require businesses to make country of origin claims. Rather, it requires businesses not to mislead or deceive, or to engage in conduct that is likely to mislead or deceive. As such, traders are free to make a 'made in... from local and imported ingredients' claim on a product as long as the claim is not misleading or deceptive, or likely to mislead or deceive as to a) where the manufacturing process occurred ('made in'), or b) the origin of the ingredients that make up the good ('from local and imported ingredients').

The ACCC consulted with consumer and industry stakeholders in the production of *Country of origin claims and the Australian Consumer Law* and made the material in relation to 'Made in Australia from local and imported ingredients' more direct and clear in response to feedback.

- 6. The 2014 Guidelines state that the ACL provides for regulations to prescribe particular processes that would or would not constitute methods for the purpose of the substantial transformation test. But at the time the Guidelines were published these had not yet been prescribed.**
- **Has any progress been made here?**
 - **Once developed, are these likely to mirror those processes deemed insufficient by the Australian Made Campaign Limited in their assessments for the trademarked logo?**

No such regulations have been made and to the ACCC's knowledge, no such regulations are currently contemplated.

- 7. A number of stakeholders have raised with the Committee the issue of using national emblems and other iconic images on labels which could lead consumers to believe the food product was from a country other than the actual country in which the product is from.**
- **As a regulator, how are images on labels regulated? What, if anything, is prohibited?**
 - **What action can the ACCC take in regards to improper use of national emblems and other iconic images?**

National emblems and other iconic symbols can generally be used on packaging but their use must not create a misleading impression about the origin of the product. A representation on packaging, whether explicit or implicit and whether created by word, by image or otherwise, must not give a misleading or deceptive impression.

Graphic promotional materials may also form the basis of an application for a Certification Trade Mark (CTM), which are considered under the *Trade Marks Act 1995*. ACCC approval is required before CTMs can be registered under the *Trade Marks Act*. The 'Australian Made, Australian Grown' logo, with a stylised kangaroo inside a triangle is an example of a CTM. Registration provides CTM owners with the exclusive right to use and to allow other persons to use the CTM.

The penalties and consequences for contraventions of the ACL are explained in the ACCC's guidance to business (at pages 22-23). They include potential Court proceedings by the ACCC to enforce the law (in which case it can seek injunctions and pecuniary penalties) and the use of infringement notices. The ACCC can also accept court enforceable undertakings from businesses to stop the conduct which is alleged to breach the ACL.