

26 October 2012

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Via email: rrat.sen@aph.gov.au

Dear Committee Secretary

RE: COMPETITION AND CONSUMER AMENDMENT (AUSTRALIAN FOOD LABELLING) BILL 2012

Coles Supermarkets (Coles) welcomes the opportunity to provide comment on the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012* (the Bill).

Coles is a leading provider of fresh food and grocery items to Australian families with over 740 stores across all Australian States and Territories. Coles has a range of up to 30,000 products and serves almost 14 million customers per week.

Coles is committed to supporting Australian products and to helping Australia grow by sourcing Australian produce from local growers and manufacturers. In fact, 96% of all of our fresh fruit and vegetables are Australian Grown, 100% of our fresh meat is Australian and almost 90% of our Coles brand food and drink is Australian made or grown.

Coles has an Australian First Policy which means we always seek to buy Australian produce in the first instance, when it is available in sufficient quantities and appropriate quality and at a fair and reasonable price. Regrettably, there are some occasions when we must import food and this generally only occurs if the product is not available in Australia due to seasonality and/or environmental factors (such as drought or flooding), poor quality products, insufficient supply to meet customer demand or the product simply is not grown, produced or made in Australia (such as beans for baked beans).

To help our customers understand these factors and the country of origin of the fresh food we sell, we have made our fresh sourcing information publically and readily available on the Coles.com.au website (see <http://produce.coles.com.au/Where-It-Comes-From.aspx>).

In addition, to help provide our customers a great range of local product and support the local communities that we operate in, our stores now have greater flexibility to source a percentage of their range from local suppliers.

Coles position on Country of Origin Labelling (CoOL)

Coles strongly supports clear and unambiguous food labelling so that our customers can make informed choices about the food they purchase. In fact, we have gone above and beyond the CoOL legislative requirements contained in the Food Standards Code, Standard 1.2.11 (the Standard) by including additional country of origin information on product packaging and at point of sale. For example, Coles currently includes CoOL on all fresh produce in our delicatessens, despite the Standard only requiring CoOL on certain mandatory products in the Standard. In 2011, we also supported the FSANZ proposal to extend Standard 1.2.11 to other products such as lamb, chicken, beef and veal etc.

Coles has been a licensee of Australian Made Australian Grown Campaign (AMAG) since 1999 and a proud campaign partner since 2007. We actively use and promote the AMAG icons in our weekly catalogue, marketing materials, in store point of sale materials and on our Coles brand product packaging. Despite this, our customer insights tell us that some consumers find the current food labelling laws unclear and confusing, particularly the “Made in Australia” claim for food products.

Coles’ position on the Bill

We understand the Bill seeks to enact recommendation 41 of the Blewett Review, by creating a specific section in the *Competition and Consumer Act* that deal solely with country or origin claims with regard to food and also seeks to enact recommendation 42 of the Blewett Review (that CoOL for food should be based on the ingoing weight of the ingredients and components, excluding water). While we support the intent of the Bill, we are concerned about the mechanics of the Bill and about some of the unintended consequences that could in fact result in further consumer and industry confusion. These concerns are outlined below for your consideration.

Inconsistency between food and non-food products

We note that the Bill creates inconsistencies for food and non-food products. The Bill is confined specifically to representations about *food*. Currently Part 5-3 of the *Competition and Consumer Act (CCA)* contains defences for country of origin representations. According to section 15 of the Bill, it is intended that both the existing Part 5-3 defences and the new provisions in the Bill both operate. This means that as a retailer of both food and non-food products, Coles will be operating with two sets of country of origin requirements:

- for our general merchandise (non-food) products, the regime will be voluntary and still contain defences for the existing origin claims such as ‘Made in Australia’ (which has the defence of ‘substantially transformed’ with 50% or more costs incurred in Australia);
- for food, the regime will be mandatory and the allowable origin claim (“Made of Australian ingredients”) is different.

Coles is concerned that inconsistent country of origin labelling requirements for the different types of products that supermarket retailers sell has the potential to create consumer and industry confusion.

Further, our understanding is that the Bill does not revoke Food Standards Code 1.2.11, but is intended to prevail “to the extent of any inconsistency”. To minimise inconsistency and duplication, Coles advocates that Standard 1.2.11 of the Food Standards Code be revoked in order to remove the unnecessary regulatory compliance burden on businesses and avoid consumer and industry confusion.

Item 1 “Product of” not to be used on food products

Coles advocates that the “Product of” claim should continue to be allowed because it is an appropriate and a particularly relevant claim for certain food products such as dairy and seafood.

Coles supports the recent comments on food labelling made by Mr Rod Sims, Chairman of the ACCC, at a speech to the Australian Food & Grocery Council in October 2012 “The ACCC does not believe there is an essential problem with the current classifications. The problem is people’s understanding of what they mean”. Mr Sims further stated “We need a classification system that deals with where a product is made. The problem is they should be looking for a ‘Product of Australia’ label”ⁱ.

To help improve customer understanding of the “Product of” claim we suggest that any reform to food labelling laws be supported by a comprehensive government led and industry supported education and awareness campaign.

We strongly support the use of the “Grown in Australia” claim and currently use this on a large number of our Coles brand products and also on our point of sale materials in store. However, we note the Bill does not currently prescribe the proposed criteria for the “Grown in Australia” claim.

Item 2 “Made of Australian Ingredients”

We understand that the Bill proposes that “Made of Australian ingredients” may only be used if at least 90% by weight (excluding water) of all ingredients are of Australian origin and that this precludes the use of the “Made in” claim for those packaged foods below the 90% weight (excluding water). Coles is concerned that such a claim could potentially mislead consumers because it could be reasonably be interpreted by consumers to mean 100% of the ingredients are Australian. This claim could also potentially raise concerns with sections 18 and 29 of the CCA.

For packaged food that does not have 90% or more of the weight comprising of Australian ingredients, without the associated “substantially transformed” test, this may result in insufficient country of origin information for consumers. For example, if there is no claim on two products because neither has 90% or more ingredients from Australia, yet one is made in Australia and the other is completely offshore, this would not give consumers sufficient origin information to help consumers support Australian manufacturers.

We suggest an alternative approach for “Made in” may be to increase the current 50% threshold to a higher per cent threshold for food (preferably not as high as 90% because this would be unworkable and many food products would not be able to comply). For consistency, it would be helpful if any new definitions are aligned to what is currently contained in the Food Standards Code in terms of characterising ingredients and ingoing weight.

We also believe it is important to recognise the place of manufacture and/or transformation in order to support Australian manufacturers. In our view, criteria should be maintained in order to ensure sufficient incentive to the Australian manufacturing sector.

Item 3 Packaged food not eligible for “Made of Australian Ingredients”

As outlined above, we support an increase in the percentage threshold for Australian food content and believe criteria to recognise the place of manufacture should be maintained in order to support Australian manufacturers.

Item 4 Regulated fresh food

We note that the list in the Bill does not seem to apply to all food products which could add to further consumer and industry confusion.

Customer awareness – visual differentiation

Our customer insights suggest that there may be some confusion and difficulty in distinguishing between the claims/logos currently used on food products. Given this, there may be an opportunity to visually differentiate or highlight the different wording on food claims - especially given that the AMAG “Made in Australia” and “Product of Australia” currently looks similar from a customer perspective. For example, the use of different colours or font styles could be explored in order to highlight the difference between each claim.

Proposed commencement date

Coles does not support the proposed commencement date of 1 January 2014. The proposed date is peak trading time for retailers and operationally it is difficult and costly to make changes to IT, in store ticketing, point of sale materials and to packaged product labelling during this period. If this Bill is introduced, we suggest that a commencement date outside peak retail trading times be adopted. This would mean a commencement date outside November to February (Christmas) and March to April (Easter).

Coles also suggests a minimum 24 month implementation period should the Bill be introduced. Many food product supply contracts operate across significant durations and product packaging is often printed well in advance of use. Without sufficient time to implement these changes, retailers and manufacturers would incur unnecessary regulatory costs and burden.

Conclusion

In summary, Coles supports strengthening food labelling laws (subject to the comments above), but believes the Bill in its current form could add further consumer and industry confusion and disadvantage the Australian manufacturing sector.

We also believe any future reform to food labelling laws need to be supported by a comprehensive government led and industry supported education and awareness campaign.

We thank you for the opportunity to provide comment on the Bill.

Yours sincerely

Robert Hadler
General Manager Corporate Affairs
Coles

¹ Mr Simms Speech to AFGC October 2012, Media Release # NR 214/12

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