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Mr Anthony Overs
Inquiry Secretary
Standing Committee on Agriculture and Industry
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Mr Overs

Thank you for the opportunity to provide input in to the Standing Committee on Agriculture and Industry Inquiry into Country of Origin Labelling for Food. The Department of Industry has prepared the attached submission addressing the terms of reference for the inquiry.

I trust the enclosed submission will be of assistance. If the Committee has any questions relating to the department's submission, please contact Ms Lyndall Milward-Bason, Manager, Trade Facilitation, by telephoning or by email:

Yours sincerely

John Ryan
Strategic Policy Advisor
Department of Industry

2 May 2014

# Department of Industry

# Submission

# The House of Representatives Standing Committee on Agriculture and Industry Inquiry into Country of Origin Labelling for Food

## 1 Executive Summary

The Department of Industry (the department) provides information in response to the following terms of reference:

- Whether the current country of origin labelling (CoOL) for food system provides enough information for Australian consumers to make informed purchasing decisions;
- Whether improvements could be made, including to simplify the current system and/or reduce the compliance burden;
- Whether Australia's CoOL laws are being circumvented by staging imports through third countries; and
- The impact on Australia's international trade obligations of any proposed changes to Australia's CoOL laws.

### 1.1 Responsibility

The department has overarching policy responsibility for Australia's CoOL framework, specifically including the 'safe harbour' provisions in the *Competition and Consumer Act 2010* covering general claims such as 'Made in (country)' and specific claims such as 'Product of (country)' claims. The department also manages the formal relationship between the Australian Government and the Australian Made Campaign Ltd (AMCL), under which AMCL licenses the *Australian Made, Australian Grown* certification trademark (incorporating the familiar triangular logo) to eligible users.

### 1.2 Australia's country of origin labelling framework

Australia's CoOL framework is regulated by a number of Acts and Regulations. These include:

- *Competition and Consumer Act 2010* (particularly Schedule 2 – Australian Consumer Law);
- *Food Standards Australia New Zealand Act 1991* (which establishes the Australia New Zealand Food Standards Code);
- *Commerce (Trade Descriptions) Act 1905* and the Commerce (Imports) Regulation 1940;
- *Imported Food Control Act 1992*; and
- *Trans-Tasman Mutual Recognition Act 1997*.

Australia's CoOL framework is intended to allow consumers to identify the origin of their goods when making purchasing decisions, without imposing an overly burdensome requirement on businesses. This is achieved by prohibiting any origin claims from being false, misleading or deceptive, and requiring certain classes of goods, particularly food, to be labelled with a country of origin.

The framework provides sufficient flexibility to allow a range of origin representations to be made that inform consumers without being misleading or deceptive. To ensure a country of origin representation can be made on any product without being false, misleading or deceptive, the framework does not prescribe explicit rules as to the claims that can be made or the criteria that must be met. To reduce complexity, uncertainty and regulatory burden for businesses, the framework provides that country of origin representations are considered not to be false, misleading or deceptive where specific criteria are met.

Commonwealth, state and territory agencies with policy or regulatory responsibility for CoOL have been working together for some time to implement the Council of Australian Government (COAG) response to the CoOL recommendations of the 2011 Labelling Logic Review of Food Labelling Law and Policy, aimed at addressing perceived weaknesses in Australia's CoOL framework. During that time, the mandatory country of origin labelling provisions of the Australia New Zealand Food Standards Code (Food Code) have been extended to unpackaged beef, sheep and chicken meat products, new CoOL guidance material has been released for consumers and (more recently) for industry, and compliance and enforcement activity by consumer agencies has revealed minimal evidence of false or misleading claims in relation to CoOL and minimal evidence of consumer detriment in the market in terms of false or misleading CoOL.

The next Australian Consumer Survey, jointly commissioned by the Commonwealth, states and territories, will commence in 2015. This survey will allow an assessment of consumer and industry views as to the effectiveness of Australia's CoOL framework (including the new guidance material) in informing consumers as to the origin of goods while minimising regulatory burdens on industry.

# 2 Country of Origin Labelling

## 2.1 Overview of the policy and legislative framework

Under the Administrative Arrangements Order (AAO) CoOL is specified as a matter dealt with by the department. The AAO also gives the Minister for Industry specific administrative responsibility for the CoOL 'safe harbour' provisions in the *Competition and Consumer Act 2010* (CCA), which covers general origin claims, such as 'Made in (country)', and specific claims, like 'Product of (country)'. This reflects the fact that CoOL is an issue that impacts on industry more broadly, and is not isolated to any one sector.

There is no general requirement in the Australian Consumer Law (ACL) for goods sold in Australia to be marked with their country of origin, but most food products and a range of imported goods are subject to specific origin marking requirements contained in other legislation. Where a supplier makes an origin claim, including where it is required to do so by law, it must comply with the general prohibition on misleading or deceptive conduct – as well as with the prohibition on making false or misleading representations concerning the place of origin of goods. These provisions are contained in sections 18 and 29 of the ACL, Schedule 2 of the CCA.

Part 5-3 of the ACL also provides defences known as 'safe harbours'. Where a supplier can show that the 'safe harbour' criteria are met, it is protected from legal challenge as to whether a particular claim is false, misleading or deceptive. Suppliers are not required to meet the 'safe harbours' in

order to make an origin claim. However, where the 'safe harbour' requirements are not met, the supplier must be able to provide evidence that the claim is not false, misleading or deceptive.

Certain classes of goods are required by other regulations to be labelled with their country of origin. Origin labelling of food products is specifically required by provisions of the *Commerce (Trade Descriptions) Act 1905* (CTD Act) and regulations under that Act; and by the Food Code established under the *Food Standards Australia New Zealand Act 1991* (FSANZ Act).

Australia's country of origin labelling framework is designed to be consistent with international obligations including:

- World Trade Organization rules (General Agreement on Tariffs and Trade, Agreement on Technical Barriers to Trade, Agreement on Rules of Origin); and
- Australia's bilateral and multilateral trade agreements (including ANZCERTA).

## 2.2 Australian Consumer Law

The ACL is the principal consumer protection law in Australia. The underpinning rationale of the ACL is to have a single, national, generic consumer law, which applies in the same way to all sectors and in all Australian jurisdictions.

The ACL provisions prohibit country of origin claims that are false, misleading or deceptive. These provisions apply to origin claims on all goods. The ACL **does not mandate country of origin claims, nor require that they be in any particular form,** but does provide legal defences ('safe harbours') for certain representations that meet defined criteria. Where the 'safe harbours' are met, the representation is deemed not to be false, misleading or deceptive. Any supplier making an origin claim can rely on these 'safe harbour' defences where it can show that the relevant criteria are met.

Where the 'safe harbour' defences are not met, suppliers must be able to prove that any origin representation made is not false, misleading or deceptive.

The 'safe harbour' defences prescribe criteria for:

- representations that goods are 'produced in' or the 'product of' a certain country;
- representations that goods or certain ingredients or components are 'grown in' a particular country;
- other representations regarding the country of origin of goods where the above claims do not apply (including but not limited to claims that goods are 'made in' a particular country);
- representations that goods meet the requirements of a 'prescribed logo'. Such logos may indicate the origin of goods that meet a higher threshold (i.e. 51% or more) of content from the claimed country of origin. No logo has been prescribed under the provisions of the ACL.

The ACL 'safe harbour' provisions are set out in full in **Attachment A**, along with extracts of other legislation that impose requirements in relation to CoOL.

While the CoOL provisions of the ACL do not impose any obligation on suppliers to indicate the origin of goods, other elements of the CoOL framework do include mandatory CoOL requirements, including the Food Code (see 2.3 below).

The provisions of the ACL are administered by the ACCC and each state and territory's consumer law agencies. Any substantive changes to the ACL, including to the 'safe harbour' provisions, would need to have appropriate support as required by the Intergovernmental Agreement for the ACL, with the proposed amendment to be supported by the Commonwealth and other jurisdictions.

## 2.3 Australia New Zealand Food Standards Code

### 2.3.1 Administrative and legislative framework

The Food Code is administered by Food Standards Australia New Zealand (FSANZ), an independent statutory agency established by the FSANZ Act. The Australian Government's Health portfolio has Commonwealth policy oversight for FSANZ.

The Food Code is applied in respect of food imported into Australia through the *Imported Food Control Act 1992* and generally for both imported and domestically produced or manufactured food through state and territory Food Acts. These Acts are enforced respectively by the Department of Agriculture, and by state and territory food regulators.

Any changes to CoOL requirements that fall within the remit of the joint Australia New Zealand Food Regulation System [i.e. FSANZ] require endorsement by the COAG Legislative and Governance Forum on Food Regulation (the Forum). Membership of the Forum includes one or more ministers with responsibility for food regulation from each state and territory and the Commonwealth and New Zealand governments. The Forum's decision-making is guided by the *Ministerial Policy Guideline for the Country of Origin Labelling of Food* (2003).

### 2.3.2 Origin labelling requirements of the Food Code

Standard 1.2.11 of the Food Code sets out "requirements for country of origin labelling for packaged food and certain unpackaged foods" and imposes a specific obligation on food suppliers to label most food products sold in Australia to show their country of origin. Currently, origin labelling requirements extend to most packaged food and to unpackaged fresh and processed fruit, vegetables, fish, pork, beef, chicken and sheep meat displayed for retail sale.

Standard 1.2.11 of the Food Code does not apply to food sold to the public by restaurants, canteens, schools, caterers or self-catering institutions, prisons, hospitals or other similar institutions.

In respect of most packaged food, the current Standard imposes a "Labelling requirement" for:

- "a statement on the package that identifies where the food was made, produced or grown"; or
- "a statement on the package that identifies the country where the food was **manufactured or packaged and** to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients ".

In respect of certain unpackaged food, retail displays are required to be labelled to identify the country or countries of origin of the food, or to indicate that the food is a mixture of local foods and imported foods, or to indicate that the food is a mix of imported foods.

The Food Code contains no explicit criteria for determining origin. The 'safe harbour' defences of the ACL apply to claims mandated by the Food Code. Where suppliers are unable to show that the 'safe harbour' defences are met, suppliers must be able to establish that any origin claim made in order to comply with the Food Code is not false, misleading or deceptive under the ACL.

The current version of Standard 1.2.11 is included in **Attachment A**.

## 2.4 Commerce (Trade Descriptions) Act

The CTD Act prohibits the importation of goods that are not marked with a trade description in accordance with the Commerce (Imports) Regulations 1940 (CI Regulations), and prohibits the importation of goods to which a false trade description is attached.

The CI Regulations list a range of goods that may not be imported "unless there is applied to those goods a trade description in accordance with these regulations". The goods required to be marked include "articles used for food or drink by man, or from which food or drink for use by man is manufactured or prepared". The trade description required by the CI Regulations must include "**the name of the country in which the goods were made or produced**". Goods imported from all countries, including New Zealand, are subject to the CTD Act and CI Regulations (which is exempted from the operation of the *Trans-Tasman Mutual Recognition Act 1997* – TTMRA – see 4.2 below).

The CTD Act specifies that a trade description is considered false if anything contained in or omitted from it renders it false or likely to mislead in a material respect. Like the Food Code, this Act contains no explicit criteria to be applied when determining where goods are made or produced. When assessing whether representations as to the country in which the goods were made or produced could be considered false under the CTD Act, importers may refer to the 'safe harbour' defences of the ACL where they are able to establish compliance with those defences. Where the 'safe harbour' defences in the ACL are not met, importers must be able to prove their claims are not false under the CTD Act by other means.

The CTD Act is the responsibility of the Immigration and Border Protection portfolio, and is enforced by the Australian Customs and Border Protection Service.

## 2.5 Imported Food Control Act

The *Imported Food Control Act 1992* permits food imported into Australia to be dealt with only if it meets applicable standards (that is, the Food Code provisions relating to information on labels for packages containing food). Administration of this Act is the responsibility of the Department of Agriculture.

# 3 Australian made, Australian grown logo

The department manages the formal relationship between the Australian Government and the Australian Made Campaign Ltd (AMCL), under which AMCL licenses the *Australian Made, Australian Grown* certification trademark to eligible users. The *Australian Made, Australian Grown* certification trademark comprises a triangular logo accompanied by a range of origin representations. AMCL licenses the *Australian Made, Australian Grown* logo to eligible users in accordance with terms of a deed of assignment conferring ownership rights, and a management deed.

The deeds regulate AMCL's ownership rights in the logo and require AMCL to report to and consult with the Commonwealth (as the original owner of the logo) on a range of matters relating to use of the logo. AMCL and its licensees are also bound by a Code of Conduct (Code) that is required under the *Trade Marks Act 1995*, and which forms part of the management deed with the Commonwealth. The Code provides for the use of the logo with several different origin descriptions (including 'Grown in Australia'), provided certain rules are met.

AMCL has argued that the 'safe harbour' defences in the ACL should be identical to the rules in the Code, particularly the criteria for general representations of origin ('Made in' and similar claims). The department is of the view that there is no case for such consistency. While, as a minimum, the criteria in the Code must be consistent with the 'safe harbours' in the ACL, the Code may include more stringent rules. Indeed aligning the ACL with the Code might diminish the value of the *Australian Made, Australian Grown* logo, which is seen as a premium representation, as it not only certifies compliance with the 'safe harbours', but also with the more stringent rules of the Code.

# 4 Country of Origin Labelling Issues

## 4.1 Role of CoOL

The department is aware of a range of concerns about Australia's CoOL framework expressed by consumers and industry in recent years, particularly following developments in the food processing sector. Three underlying factors appear to be driving these concerns: many consumers and some producers have difficulty understanding CoOL; some would like to see changes to CoOL to help support Australian producers; and some consumers use CoOL as a proxy for food safety.

The CoOL framework is not intended to support Australian producers. Consistent with our international obligations, Australia's CoOL framework does not seek to prejudice goods from any particular country, or to favour goods produced in Australia. For example, the CoOL provisions of the Food Code and the ACL apply equally to imported and locally produced goods. Any attempt to change the CoOL framework to encourage consumers or producers to substitute imported products or ingredients with Australian products or ingredients could be seen as inconsistent with a range of Australia's international trade obligations. In addition, any attempt to impose Australian-specific CoOL could add costs to Australian producers that would not be incurred by overseas competitors, putting them at a disadvantage in the market. This could ultimately lead to fewer Australian producers and reduced consumer choice.

Also, the CoOL framework is not intended to be a proxy for food safety. All food imported and sold in Australia must comply with the food safety provisions of the Food Code and the Imported Food Inspection Scheme. While the Government recognises that food safety is an important issue for consumers, country of origin labels are not intended to provide any information upon which consumers should judge the safety of the food they purchase and consume.

The CoOL framework is only intended to support informed purchasing decisions by consumers. For this reason, the department's primary concern is that many consumers and some producers appear to be confused by CoOL. To address this issue, the department is working with other agencies and stakeholder representatives to improve consumer and industry understanding of Australia's current framework (see 5.1 below).

## 4.2 Imports from New Zealand

Some Australian consumers and growers are concerned that Australia's current country of origin labelling framework allows food that does not originate in New Zealand to be represented as the product of New Zealand. This concern appears to arise due to the non-adoption of the CoOL provisions of the Food Code by New Zealand and the operation of the TTMRA. The TTMRA provisions release goods imported from New Zealand from the application of Australian legislation relating to their presentation for sale – including the CoOL provisions of the Food Code and the ACL.

However, the TTRMA provisions only operate where the goods imported from New Zealand are able to be legally sold in New Zealand. Where a false or misleading representation has been made in relation to the place of origin of any goods, they cannot be sold legally in New Zealand. This means that, should goods bearing false or misleading representations as to the place of origin be imported into Australia from New Zealand, the TTMRA provisions would not apply, and those goods would be subject to the CoOL provisions of the ACL, the Food Code and associated regulation.

Also, all goods imported into Australia from New Zealand must comply with the CTD Act. This Act is specifically excluded from the operation of the TTMRA. Regulations made for the purposes of the CTD Act require all food and beverage articles imported into Australia (including from New Zealand) to be marked with the country in which they were made or produced, and precludes the importation of goods bearing false (including misleading) representations.

Consequently, the existing regulatory framework precludes any goods imported from New Zealand bearing a false or misleading country of origin representation from being imported into or sold in Australia.

# 5 Country of Origin Labelling Activity

## 5.1 Labelling Logic – COAG Response

In December 2011, the COAG Legislative and Governance Forum on Food Regulation (the Forum) responded to the Labelling Logic Review of Food Labelling Law and Policy. In that response, the Forum asked for proposals on extending mandatory CoOL provisions in the Food Code to all primary food products to be brought forward for consideration. The Forum also considered changes to the CoOL framework to address the Review's finding that many consumers found CoOL confusing. However, rather than address this issue though changes to the CoOL framework, the Forum asked agencies to review CoOL guidance material and, if necessary, conduct an education campaign, with a view to clarifying CoOL.

Following the Forum's response, proposals for the extension of the mandatory CoOL provisions in the Food Code were referred to the Forum. Also, a Commonwealth working group was established to facilitate the review and development of CoOL guidance material. The department and Treasury co-chair the working group. Other members of the working group include the ACCC, Department of Agriculture, Department of Health, FSANZ, Department of Foreign Affairs and Trade and the Australian Customs and Border Protection Service.

During this period, Commonwealth, state and territory consumer agencies worked together to develop and implement a compliance and enforcement strategy targeted at CoOL (and other labelling issues) to determine the level and nature of any misconduct in the market.

As a result of these activities, the mandatory CoOL provisions within the Food Code were extended to unpackaged beef, sheep and chicken meat products with effect from 18 July 2013 and, in consultation with consumer and industry representatives, state and territory regulators and the Commonwealth working group, the ACCC released new CoOL guidance material in October 2012 (for consumers) and April 2014 (for industry). In addition, the targeted compliance and enforcement activity undertaken nationally by consumer agencies in 2012 identified minimal evidence of false or misleading claims in relation to CoOL and minimal evidence of consumer detriment in the market in terms of false or misleading CoOL. Based on the outcomes of this work, Consumer Affairs Ministers agreed that the ACL has the necessary investigative and enforcement powers to effectively address misleading or deceptive food labelling concerns.

### 5.2 Further work

The Commonwealth working group is expected to continue to consider and develop educational strategies with the view to assisting consumers understand the CoOL framework. A formal assessment of consumers' understanding of and responsiveness to the CoOL framework and the new guidance material is expected to be undertaken as part of the second Australia Consumer Survey commencing in 2015. The findings of the Survey will be used as an evidence base to determine whether further work is needed either in relation to the CoOL framework or to improve consumer or industry understanding.

In assessing whether further work may be needed, the working group would consider all available evidence as to any weaknesses in the current framework or guidance material. It would also take into account the need to impose the minimum regulatory burden on industry necessary to provide consumers with information on the origin of the goods they are seeking to buy, as well as our international trade obligations in relation to the importation and sale of goods in Australia.

## 6 Challenges associated with change

### 6.1 The need for flexibility

An origin labelling regulatory framework needs to balance a tension that exists between ensuring consumers have the appropriate level of information to inform their purchasing decisions and minimising the compliance burden on businesses making origin claims. Australia's current origin labelling regulatory framework achieves this balance by allowing businesses the flexibility to make any origin claim so long as it is not false, misleading or deceptive. Where certain classes of goods, such as food, are required to make an origin claim, the framework provides a flexible set of parameters for making that claim. Additionally, the 'safe harbours' in the ACL reduce the regulatory burden on businesses by providing an assurance that a claim made about the country of origin of a good would not be subject to a legal challenge where it can be shown that the goods meet certain criteria.

The ACL 'safe harbours' do not provide a defined set of parameters that all origin claims must meet. Where an origin claim is made in relation to a product that does not meet an ACL 'safe harbour', the supplier must be able to prove that the origin claim is not false, misleading or deceptive.

Australia's CoOL framework does not include explicit rules for determining origin. Doing so would not be practical given the varied, complex and ever-changing processes used to produce different goods. Prescribing explicit rules would be particularly incompatible with Australia's framework, which mandates origin claims for certain classes of goods. Explicit origin rules combined with mandatory origin labelling would be unworkable – goods that did not meet any of the explicit origin rules would either breach those rules if an origin were claimed, or breach the mandatory labelling requirement if no origin were claimed.

Food products often incorporate ingredients from a variety of sources that may have been processed in a variety of countries. Through an example involving an imported chocolate bar, the industry guidelines on CoOL, released recently by the ACCC, illustrate the difficulties that are encountered when making an origin claim about products that incorporate a variety of ingredients from a variety of sources. In the example, the chocolate bar ingredients may include sugar from Australia, cocoa mass from the Caribbean, peanuts from India and dried fruit from South Africa. These ingredients may then be processed in Singapore to produce a chocolate bar that is imported into Australia.

The ACCC guidance suggests that, in this example, the best approach would be to use a claim that provides sufficient information to comply with labelling laws, such as the ACL and the CTD Act, while avoiding potentially false or misleading claims to consumers. It is noted that the various costs of manufacture (including the processing of the ingredients into the chocolate bar) could be crucial in deciding where the chocolate bar is 'made'.

Similar issues could arise under the existing CoOL framework with respect to chocolate bars and other food products made in Australia from imported ingredients. Nevertheless, as shown in the above example, the current CoOL framework is sufficiently flexible to allow an adapted origin representation to be made that would not be false, misleading or deceptive. Any tightening of the existing framework to remove this flexibility would render it unworkable with respect to highly processed food products of this nature.

Similarly, due to seasonality, the source of particular ingredients for processed or blended food could vary throughout the year, and in fact could vary within a batch. Again, the flexibility built into the current CoOL framework permits an adapted claim to be made in such cases – allowing producers to make clear and accurate claims without the need to change packaging. Highly prescriptive rules, especially those that would require the identification of the origin of ingredients, could prove to be difficult, costly and risky for producers should they be obliged to alter labels on a regular basis to adjust for seasonal availability.

Situations like this are a reality of global supply chains and modern food manufacturing. Australia's labelling system needs to incorporate sufficient flexibility to allow sophisticated products to be labelled with a country of origin claim that is true and that does not mislead or deceive consumers.

## 6.2 Integrated framework

Australia's CoOL framework is highly integrated. The framework provides for consumer, food and import regulation of CoOL. It also operates at the Commonwealth, state and territory level. Together the various elements of the CoOL framework serve to inform Australian consumers about the origin of the goods they might wish to buy in a way that minimises the regulatory burden on producers and other industry participants, both in Australia and overseas.

Any attempt to alter elements of the CoOL framework would require thorough assessment to ensure the framework as a whole remains practical, effective and consistent with Australia's international trade obligations. Any proposal to adjust the food or consumer regulatory elements of the CoOL framework would also require the agreement of the Commonwealth, states and territories.

**Attachment A**

# Legislation relevant to CoOL in Australia

List of legislation extracts

AUSTRALIAN CONSUMER LAW Part 5 3—Country of origin representations

FOOD STANDARDS CODE Standard 1.2.11 (Effective from 18 July 2013)

IMPORTED FOOD CONTROL ACT 1992

COMMERCE (TRADE DESCRIPTIONS) ACT 1905

COMMERCE (IMPORTS) REGULATIONS 1940

TRANS TASMAN MUTUAL RECOGNITION ACT 1997

FAIR TRADING ACT 1986 (NEW ZEALAND)

Department of Industry Submission to the Review of Country of Origin for Food 2014

# AUSTRALIAN CONSUMER LAW

## Part 5-3—Country of origin representations

### 254 Overview

This Part provides that certain country of origin representations made about goods do not contravene:

(a) section 18 (which deals with misleading or deceptive conduct); or

(b) section 29(1)(a) or (k) or 151(1)(a) or (k) (which deal with false or misleading representations).

### 255 Country of origin representations do not contravene certain provisions

(1) A person does not contravene section 18, 29(1)(a) or (k) or 151(1)(a) or (k) only by making a representation of a kind referred to in an item in the first column of this table, if the requirements of the corresponding item in the second column are met.

| Country of origin representations | | |
|---|---|---|
| **Item** | **Representation** | **Requirements to be met** |
| 1 | A representation as to the country of origin of goods | (a) the goods have been substantially transformed in that country; and<br>(b) 50% or more of the total cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that occurred in that country; and<br>(c) the representation is not a representation to which item 2 or 3 of this table applies. |
| 2 | A representation that goods are the produce of a particular country | (a) the country was the country of origin of each significant ingredient or significant component of the goods; and<br>(b) all, or virtually all, processes involved in the production or manufacture happened in that country. |
| 3 | A representation as to the country of origin of goods by means of a logo specified in the regulations | (a) the goods have been substantially transformed in the country represented by the logo as the country of origin of the goods; and<br>(b) the prescribed percentage of the cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that happened in that country. |
| 4 | A representation that goods were grown in a particular country | (a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and<br>(b) each significant ingredient or significant component of the goods was grown in that country; and<br>(c) all, or virtually all, processes involved in the production or manufacture happened in that country. |
| 5 | A representation that ingredients or components of goods | (a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; |

| Country of origin representations | | |
|---|---|---|
| **Item** | **Representation** | **Requirements to be met** |
| | were grown in a particular country | and<br>(b) each ingredient or component that is claimed to be grown in that country was grown only in that country; and<br>(c) each ingredient or component that is claimed to be grown in that country was processed only in that country; and<br>(d) 50% or more of the total weight of the goods is comprised of ingredients or components that were grown and processed only in that country. |

Note: The regulations may prescribe rules for determining the percentage of the total costs of production or manufacture of goods attributable to production or manufacturing processes that occurred in a particular country, see section 257.

(2) Despite subsection (1), this section does not apply to a representation of a kind referred to in item 4 or 5 in the first column of the table in that subsection if the representation is made together with another representation of a kind referred to in item 1 or 2 in that first column.

(3) Goods are substantially transformed in a country if they undergo a fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.

(4) Without limiting subsection (3), the regulations:

(a) may prescribe changes (whether in relation to particular classes of goods or otherwise) that are not fundamental changes for the purposes of that subsection; and

(b) may include examples (in relation to particular classes of goods or otherwise) of changes which are fundamental changes for the purposes of that subsection.

(5) Item 2 of the table in subsection (1) applies to a representation that goods are the produce of a particular country whether the representation uses the words "product of", "produce of" or any other grammatical variation of the word "produce".

(6) The regulations made for the purposes of item 3 of the table in subsection (1) may, in relation to a specified logo, prescribe a percentage in the range of 51% to 100% as the percentage applicable to goods for the purposes of paragraph (b) in the second column of that item.

(7) Goods, or ingredients or components of goods, are grown in a country if they:

(a) are materially increased in size or materially altered in substance in that country by natural development; or

(b) germinated or otherwise arose in, or issued in, that country; or

(c) are harvested, extracted or otherwise derived from an organism that has been materially increased in size, or materially altered in substance, in that country by natural development.

(8) For the purposes of items 4 and 5 in the table in subsection (1) in relation to particular goods:

(a) packaging materials are not treated as ingredients or components of the goods; and

(b) disregard the weight of packaging materials in working out the weight of the goods.

(9) For the purposes of items 4 and 5 in the table in subsection (1) in relation to an ingredient or component that has been dried or concentrated by the evaporation of water, and to which water has been added to return the water content of the ingredient or component to no more than its natural level:

(a) the weight of the water so added is included in the weight of the ingredient or component; and

(b) the water so added is treated as having the same origin as the ingredient or component, regardless of its actual origin.

**256 Cost of producing or manufacturing goods**

(1) The cost of producing or manufacturing goods is worked out, for the purposes of section 255, by adding up the following amounts:

(a) the amount of expenditure on materials in respect of the goods;

(b) the amount of expenditure on labour in respect of the goods;

(c) the amount of expenditure on overheads in respect of the goods;

(d) each worked out in accordance with this table:

| **Cost of producing or manufacturing goods** | | |
|---|---|---|
| **Item** | **This amount of expenditure:** | **is worked out as follows:** |
| 1 | Expenditure on materials in respect of the goods | The cost of materials used in the production or manufacture of the goods:<br>(a) that is incurred by the manufacturer of the goods; and<br>(b) that has not been prescribed by regulations made for the purposes of subsection (2)(a). |
| 2 | Expenditure on labour in respect of the goods | The sum of each labour cost:<br>(a) that is incurred by the manufacturer of the goods; and<br>(b) that relates to the production or manufacture of the goods; and<br>(c) that can reasonably be allocated to the production or manufacture of the goods; and<br>(d) that has not been prescribed by regulations made for the purposes of subsection (2)(b). |
| 3 | Expenditure on overheads in respect of the goods | The sum of each overhead cost:<br>(a) that is incurred by the manufacturer of the goods; and<br>(b) that relates to the production or manufacture of the goods; and<br>(c) that can reasonably be allocated to the production or manufacture of the goods; and<br>(d) that has not been prescribed by regulations made for the purposes |

| Cost of producing or manufacturing goods | | |
|---|---|---|
| **Item** | **This amount of expenditure:** | **is worked out as follows:** |
| | | of subsection (2)(c). |

(2) The regulations may, for the purposes of subsection (1), prescribe that:

(a) the cost of a particular material, or a part of such a cost; or

(b) a particular labour cost, or a part of a labour cost; or

(c) a particular overhead cost, or a part of an overhead cost;

is not allowable in respect of goods, or classes of goods.

(3) The regulations may, for the purposes of subsection (1), prescribe the manner of working out:

(a) the cost of a material, or part of the cost; or

(b) a labour cost, or part of the cost; or

(c) an overhead cost, or part of the cost.

**257 Rules for determining the percentage of costs of production or manufacture attributable to a country**

(1) Subject to subsection (2), the regulations may prescribe rules for determining, for the purposes of section 255, the percentage of the total cost of production or manufacture of goods attributable to production or manufacturing processes that occurred in a particular country.

(2) Rules prescribed under subsection (1) must not discriminate (whether favourably or unfavourably) between countries or classes of countries.

**258 Proceedings relating to false, misleading or deceptive conduct or representations**

If:

(a) proceedings are brought against a person in respect of section 18, 29(1)(a) or (k) or 151(1)(a) or (k); and

(b) the person seeks to rely on a provision of this Part, or of a regulation made for the purposes of a provision of this Part, in the proceedings;

the person bears an evidential burden in relation to the matters set out in the provision on which the person seeks to rely.

# FOOD STANDARDS CODE

## Standard 1.2.11 (Effective from 18 July 2013)

## 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**



**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

(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.

# IMPORTED FOOD CONTROL ACT 1992

## Part 1—Preliminary

### 2A Object of Act

The object of this Act is to provide for the compliance of food imported into Australia with Australian food standards and the requirements of public health and safety.

### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

***applicable standard***, in relation to particular food, or a particular matter affecting food, at a particular time, means the national standard in force in relation to that food or matter at that time.

***food*** includes:

(a) any substance or thing of a kind used or capable of being used as food or drink by human beings; or

(b) any substance or thing of a kind used or capable of being used as an ingredient or additive in, or substance used in the preparation of, a substance or thing referred to in paragraph (a); or

(c) any other substance or thing that is prescribed;

whether or not it is in a condition fit for human consumption, but does not include a therapeutic good within the meaning of the Therapeutic Goods Act 1989.

***national standard***, in relation to a particular food or a particular matter affecting food, means a standard relating to that food or matter:

(a) that is in force as a standard adopted by the Australia New Zealand Food Standards Council; or

(b) that is included in the Australia New Zealand Food Standards Code.

### 7 Food to which Act applies

(1) This Act applies to all food imported into Australia other than:

(aa) food that is imported from New Zealand and is of a kind that is specified by the regulations to be food to which this Act does not apply; or

(a) prohibited food; or

(b) food that is imported for private consumption; or

(c) food that is ship's stores or aircraft's stores, within the meaning of section 130C of the Customs Act; or

(d) food that is imported as a trade sample.

(2) Food of a particular kind is taken to have been imported for private consumption if it has not been imported as a trade sample and:

(a) as to food that is in liquid form—if it has a volume of less than 10 litres or such lesser volume (if any) as is prescribed in the regulations in respect of food of that kind; or

(b) as to food that is not in liquid form—if it has a weight of less than 10 kilograms or such lesser weight (if any) as is prescribed in the regulations in respect of food of that kind.

(3) Food of a particular kind is imported as a trade sample if:

(a) the food is imported for the purposes of scientific or commercial evaluation; and

(b) the food is not imported for consumption by any person; and

(c) the food is:

(i) in liquid form and has a volume of less than 20 litres or such lesser volume (if any) as is prescribed by the regulations in respect of food of that kind; or

(ii) not in liquid form and has a weight of 20 kilograms or such lesser weight (if any) as is prescribed by the regulations in respect of food of that kind.

**Part 2—Control**

**Division 1—Controls on the importation and movement of food**

**8A Labelling offence**

(1) A person may only deal with food imported into Australia if the food meets applicable standards relating to information on labels for packages containing food.

Penalty: Imprisonment for 10 years.

(2) Subsection (1) does not apply to a dealing with food for the purpose of altering or replacing the label on the package containing the food in order to meet applicable standards referred to in that subsection.

## COMMERCE (TRADE DESCRIPTIONS) ACT 1905

**3 Interpretation**

In this Act, unless the contrary intention appears:

***Trade description***, in relation to any goods, means any description, statement, indication, or suggestion, direct or indirect:

...

(b) as to the country or place in or at which the goods were made or produced; or

...

and includes a Customs entry relating to goods; and any mark which according to the custom of the trade or common repute is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act.

***False trade description*** means a trade description which, by reason of anything contained therein or omitted therefrom, is false or likely to mislead in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, which makes the description false or likely to mislead in a material respect.

**Part III—Imports**

**7 Prohibition of imports not bearing prescribed trade description**

(1) The regulations may prohibit the importation or introduction into Australia of any goods unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed.

(2) Subject to subsection (3), goods imported in contravention of any regulation made for the purposes of subsection (1) are forfeited to the Crown.

(3) If the CEO is satisfied that the contravention was not intentional or reckless:

(a) the CEO may, by notice in writing given to the owner or importer of the goods concerned, require the owner or importer:

(i) to apply the prescribed trade description; or

(ii) to export the goods;

within a period specified in the notice; and

(b) if the owner or importer complies with the notice, subsection (2) does not apply in respect of the goods.

(4) No regulations made for the purposes of this section shall take effect until after the expiration of not less than three months from notification in the *Gazette*.

**8 Imported goods found in Australia without prescribed trade description**

All imported goods to which a trade description is by the regulations required to be applied, and which are found in Australia without the prescribed trade description, shall until the contrary is proved be deemed, subject to the regulations, to have been imported in contravention of the regulations.

**9 Importation of falsely marked goods**

(1) A person shall not import any goods to which a false trade description is applied.

Penalty: $10,000.

(2) In a prosecution for an offence against subsection (1) it is a defence if the defendant proves that he did not intentionally import the goods in contravention of that subsection.

**9A Imported goods found in Australia with false trade description**

All imported goods found in Australia which bear a false trade description shall, until the contrary is proved, be deemed to have been imported in contravention of this Act.

**10 Forfeiture of falsely marked goods**

(1) Goods to which a false trade description is applied are prohibited to be imported.

(2) Subject to subsection (3), goods imported in contravention of subsection (1) are forfeited to the Crown.

(3) If the CEO is satisfied that the contravention was not intentional or reckless:

(a) the CEO may, by notice in writing given to the owner or importer of the goods concerned, require the owner or importer to correct the false trade description within a period specified in the notice; and

(b) if the owner or importer complies with the notice, subsection (2) does not apply in respect of the goods.

## COMMERCE (IMPORTS) REGULATIONS 1940

**REG 7 Additional prohibition of certain imports**

(1) The importation of the following goods is prohibited unless there is applied to those goods a trade description in accordance with these regulations:

- (a) articles used for food or drink by man, or from which food or drink for use by man is manufactured or prepared;
- (b) medicines or medicinal preparations for internal or external use;
- (c) fertilizer;
- (d) agricultural seeds;
- (e) plants;
- (f) textile products and articles of apparel including shoes;
- (h) jewellery;
- (ha) goods, the total outside area of which is not less than one hundred and fifty-five square centimetres, specified in the Fourth Schedule to these regulations, being:
  - (i) goods made from leather or a material resembling leather;
  - (ii) goods made from fibre or vulcanite or a material resembling fibre or vulcanite; or
  - (iii) goods made from plastic;
- (i) brushware;
- (j) china, porcelain, earthenware and enamelled hollowware of the following kinds:
  - (i) articles of a description commonly used in connexion with the serving of food or drink for man; and
  - (ii) kitchenware and kitchen utensils;
- (k) electrical appliances, apparatus and accessories, including electric incandescent lamps;
- (l) powder puffs;
- (m) toys;
- (n) cigars, cigarettes, manufactured tobacco, cigarette papers and cigarette tubes;
- (o) Portland cement;
- (p) sanitary and lavatory articles of earthenware, fireclay, vitreous china or similar substances or materials;
- (q) wall, hearth and floor tiles;
- (r) watches and clocks and movements for watches and clocks; and
- (s) goods that are imported in the packages in which they are customarily exposed or offered for sale, other than:
  - (i) goods of a kind referred to in a preceding paragraph;
  - (ii) goods of a kind specified in Part I of the Fifth Schedule; or
  - (iii) goods contained in packages included in a class of packages specified in Part II of that Schedule.

(2) For the purposes of paragraph (ha) of the last preceding subregulation, goods shall be deemed to be made from:

- (a) leather or a material resembling leather;
- (b) fibre or vulcanite or a material resembling fibre or vulcanite; or
- (c) plastic;

if more than one-half of the outside area of the goods consists of leather, a material resembling leather, fibre, a material resembling fibre, vulcanite, a material resembling vulcanite or plastic, as the case requires.

**REG 8 Trade description — general requirements**

The trade description to be applied in accordance with these regulations is a trade description that complies with the following provisions:

(a) subject to these regulations, the trade description, in the case of goods other than goods that are imported as pre-packed articles, shall be in the form of a principal label or brand affixed in a prominent position and in as permanent a manner as practicable to the goods or, if affixture to the goods is impracticable, to the coverings containing the goods;

(b) subject to these regulations, the trade description, in the case of goods imported as pre-packed articles, shall be marked on the packages in which the goods are packed;

(c) the trade description shall contain, in prominent and legible characters:

(i) the name of the country in which the goods were made or produced;

...

# TRANS TASMAN MUTUAL RECOGNITION ACT 1997

**10 Entitlement to sell goods**

The Trans-Tasman mutual recognition principle is that, subject to this Part, goods produced in or imported into New Zealand, that may lawfully be sold in New Zealand, either generally or in particular circumstances, may, by virtue of this Act, be sold in an Australian jurisdiction either generally or in particular circumstances (as the case may be), without the necessity for compliance with further requirements imposed by or under the law of that jurisdiction as described in section 11.

**11 Requirements that do not need to be complied with**

The further requirements referred to in section 10 are any one or more of the following requirements relating to sale that are imposed by or under the law of the Australian jurisdiction concerned:

...

(b) a requirement that the goods satisfy standards of the jurisdiction relating to the way the goods are presented, including for example requirements relating to their packaging, labelling, date stamping or age;

...

(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 the jurisdiction.

**Schedule 1—Exclusions**

**Part 1—Introduction**

**1 Excluded laws**

(1) The laws specified or described in this Schedule are excluded from the operation of this Act, so far as they relate to:

(a) customs controls and tariffs—but only to the extent that the laws provide for the imposition of tariffs and related measures (for example, anti-dumping and countervailing duties) and the prohibition or restriction of imports; and

...

(2) The laws specified or described in this Schedule are excluded only to the extent that those laws would be affected by the Trans-Tasman mutual recognition principle as applying to goods.

**Part 2—Laws**

**2 Customs controls and tariffs (including laws relating to international obligations)**

| **Prohibited imports** |
| --- |
| ... |
| *Commerce (Trade Descriptions) Act 1905* of the Commonwealth |

## FAIR TRADING ACT 1986 (NEW ZEALAND)

**13 False or misleading representations**

No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services,—

...

(j) Make a false or misleading representation concerning the place of origin of goods.