

Australian Food and Grocery Council

SUBMISSION

26 OCTOBER, 2012

TO:

SENATE STANDING COMMITTEES ON RURAL AND
REGIONAL AFFAIRS AND TRANSPORT

IN RESPONSE TO:

COMPETITION AND CONSUMER AMENDMENT
(AUSTRALIAN FOOD LABELLING) BILL 2012 (NO. 2)
TO AMEND COUNTRY OF ORIGIN LABELLING
REQUIREMENTS FOR FOOD



The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, drink and grocery manufacturing industry.

The membership of AFGC comprises more than 150 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the processed food, beverage and grocery products sectors.

With an annual turnover in the 2010-11 financial year of \$110 billion, Australia's food and grocery manufacturing industry makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector¹ is Australia's largest manufacturing industry. Representing 28 per cent of total manufacturing turnover, the sector the second largest industry behind the Australian mining sector and accounts for over one quarter of the total manufacturing industry in Australia.

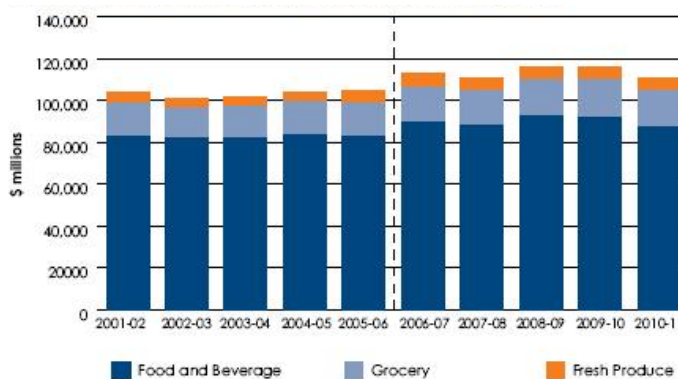
The diverse and sustainable industry is made up of over 22,600 businesses and accounts for over \$49 billion of the nation's international trade. These businesses range from some of the largest globally significant multinational companies to small and medium enterprises. The industry spends \$466.7 million a year on research and development.

The food and grocery manufacturing sector employs more than 296,300 Australians, representing about 3 per cent of all employed people in Australia, paying around \$11.3 billion a year in salaries and wages.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost half of the total persons employed being in rural and regional Australia². It is essential for the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

Australians and our political leaders overwhelmingly want a local, value-adding food and grocery manufacturing sector.

Figure 1. Composition of the industry's turnover (\$2010-11)



Source: Based on ABS, catalogue number 8221.0 and 8159.0

1 Fast moving consumer goods includes all products bought almost daily by Australians through retail outlets including food, beverages, toiletries, cosmetics, household cleaning items etc.

2 About Australia: www.dfat.gov.au

1. INTRODUCTION

The Australian Food and Grocery Council (AFGC) welcome the opportunity to make this submission to the Senate Standing Committee on Rural and Regional Affairs and Transport in response to the enquiry on the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2).

AFGC notes the intent of this application is to amend the Competition and Consumer Act to prohibit the use of the terms 'Product of' and 'Made in' in relation to food, and prescribes alternate labelling for packaged foods manufactured in Australia subject to a minimum threshold level of 90% by weight for Australian content, prohibits claims for unpackaged foods that contain any ingredient not grown in Australia, and prescribes grown in country of origin statements for all regulated fresh foods.

In light of concerns from some sectors of the community and industry that current country of origin labelling requirements do not provide adequate advice on the origin of ingredients, the AFGC **supports** a review of Country of Origin Labelling (CoOL) regulations to improve their usefulness to consumers. Labelling should give meaningful information about both the country of origin of key ingredients and the country of manufacture where most of the value-add takes place (i.e. where the jobs are) in order to meet consumer expectations.

Consequently the AFGC is **opposed** to the proposed Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) on the grounds this fails to provide clear and unambiguous information about the origin of processed value added food products and where these products are made and, in doing so, fails to provide consumers with the option to support employment in Australia, particularly rural and regional employment.

The AFGC is **opposed** to the substance of the proposed Bill on the grounds that it imposes unreasonable and unwarranted conditions on the requirements for the use of the term "made of Australian ingredients" in labelling of packaged foods without provision for alternative labelling requirements. Products manufactured in Australia using Australian ingredients at a level less than 90% Australian content by weight will be in unregulated, allowing a variety of alternative declarations of origin and resulting in confusion and uncertainty for consumers.

If adopted, this Bill will be to the detriment of the Australian food manufacturing industry, reducing international competitiveness, causing loss of manufacturing capacity in Australia and reducing returns to primary producers. Ultimately, consumers will bear higher costs either through increased prices of locally manufactured product, or the reduced availability and increased cost of fresh local produce as a result of a declining horticultural sector.

AFGC provides an alternative approach to improved country of origin labelling which is outlined in the body of this submission.

2. GENERAL COMMENTS

AFGC believes that an internationally competitive domestic food and grocery manufacturing industry supported by a robust and responsive policy and regulatory framework is critical to ensuring our food supply is secure, that it meets the nutrition and health needs of consumers and it is sustainable for the longer term.

Despite exceedingly difficult trade and economic conditions in recent years, the food processing industry has consistently accounted for at least 23 per cent of employment in the Australian

manufacturing sector. It is Australia's largest manufacturing industry by gross value add, employing nearly 222, 800 people currently, many of whom are in rural and regional areas. The industry also exported nearly \$17 billion worth of processed food in 2010-11, or approximately 63 per cent of total Australian food exports³.

The Australian brand is a quality hallmark and more can be made of the opportunity to use it both in Australia and overseas, especially in terms of Australian branding to assist businesses operating out of Australia to capture new Asian markets. It is therefore essential that there is recognition not only of the Australian content, but also the place of manufacture, and that the terms used are consistent with recognised terms in international trade. 'Product of' and 'Made in' are well established terms which, if prohibited in Australia, increase costs for additional labelling to meet export markets requirements.

It is important that regulatory requirements be efficient; taking into account the costs to industry and government to ensure compliance, and effective in delivering the intended outcomes for consumers. This proposed change should support a more competitive and innovative market in responding to consumer needs, and thereby provide an opportunity for improved public awareness of the origin of the ingredients and the place in which the food is manufactured.

In the development of the Country of Origin Labelling Standard under proposal P292 in 2005, Food Standards Australia New Zealand (FSANZ) extensively examined options for country of origin labelling and costs imposed on the food industry and borne by consumers. The current requirements for country of origin labelling are consistent with international food standards, the *Codex Alimentarius*, recognised by the World Trade Organisation in international trade.

The government also recently released the Food Processing Industry Strategy Group Report on the status and future of the Australian food processing industry. This report also identified concerns with Made in. In relation to concerns about country of origin labelling, the report concluded:

*"While CoOL can be shown to be necessary to address fully articulated 'market failure', reservations have been placed on mandatory origin labelling for 'consumer value' reasons. Consideration must be given to any potential costs to industry resulting from regulatory burden. That being said, there is value in industry-initiated self-regulatory intervention to allow for a more structured approach to consumer value issues."*³

The terms 'Product of', 'Made in' and 'Grown in' are terms that are defined in legislation, but are poorly understood in the community through a lack of support and education.

Concerns expressed in the previous Senate Community Affairs Legislation Committee enquiry on Truth in Labelling, and to the government review of Food Labelling Policy and Law chaired by Neil Blewett highlighted a misunderstanding of the 'Made in Australia' statement combined with concerns about imported ingredients and an expectation that 'Made in Australia' means Australian jobs and Australian content. Concerns expressed by producers and consumers about the requirements for 'Made in Australia' are that it does not go far enough to protect Australian producers against cheap imports or that consumers are misled about the level of Australian content in products and the degree to which it actually contributes to local employment.

³ Food Strategy Group Industry Processing Final Report, Sept 2012.

<http://www.innovation.gov.au/Industry/FoodProcessingIndustry/Documents/FPISGFinalReport2012.PDF>

This has been recognised by government, with Treasury and the Department of Industry, Innovation, Science, Research and Tertiary Education having recently agreed to examine options for improving consumer understanding of the meanings of country of origin claims, and a new consumer pamphlet to support this education initiative.

3. PRINCIPLES FOR CLEAR LABELLING

The requirements of the Consumer and Competition Law are that the country of origin declaration must not be misleading or deceptive, and that additional qualification of the made in statement may be required, such as 'Made in Australia with local and imported ingredients' when there is a significant proportion, but less than 50% of imported ingredients with more than 50% Australian content.

The principles to which Country of Origin Labelling (CoOL) requirements for foods and beverage should be applied are that this must provide:

- Clear and unambiguous information to consumers on the origin of the food ingredients;
- Meaningful information on where significant transformation / value add has taken place;
- A flexible and pragmatic approach that supports Australian jobs and takes account of seasonal factors and 'acts of god'.

For almost all packaged foods sold at retail, it is estimated that about 90% now have some element of imported packaging (can, plastic, aseptic packaging, labels, etc) and/or imported ingredients (yeast, cocoa, spices, specific oils etc). Some of the imported components are not available within Australia as it is cost-prohibitive to manufacture small volumes of specialty components for the Australian market. While some foods that qualify for "Product of Australia" and are manufactured in Australia, there may be very small quantities of imported ingredients, such as food processing aids or food additives included in the product.

The current Made in Australia claim is often mistakenly taken to mean that all of the food's ingredients originated in Australia. This confusion about what the claim means can lead consumers to feel they are being misled and represents one of the key shortcomings of the current labelling system.

In the 2011 report *Labelling Logic: Review of Food Labelling Law and Policy*⁴, recommendation 42 on Country of Origin Labelling proposed that the terms 'Product of...' and 'Made in...' be replaced with a completely different term based on the proportion by weight of the ingredients or components (excluding water) of Australian origin.

The AFGC does not consider this approach addresses the concerns of consumers and fails to recognise the importance of the where the product is manufactured. It also significantly disadvantages Australian manufacturers of products that contain a significant water content and small proportion of imported ingredients (such a beer manufacturer). Simply identifying the ingredients as being Australian does not identify products using Australian-grown ingredients (such as wheat, dairy and meat) but may not be processed in Australia.

Another approach is to specifically nominate the country of all major ingredients on pre-packaged foods. This approach was examined by the Centre for International Economics⁵ and found it would significantly increase costs due to the complexity of the food system, and adding a significant burden

⁴ <http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/labelling-logic>

⁵ http://www.foodstandards.gov.au/_srcfiles/P292-%20BCA%20_17%20Feb_2006.doc

due to additional labelling costs, particularly small businesses. Companies may source the same type of raw material from more than one country due to the seasonal availability or other factors affecting supply. It is costly and impractical to have to keep changing labels on foods to inform customers of the exact origin of an imported food. The CIE report concluded:

“Indeed, the weight of evidence suggests that implementation of the proposed extension of CoOL would not be in the overall interest of Australia. It would harm the horticultural industry, the horticultural processing industry and exports. Consumers would have to pay more for a tiny increment in information of little extra value to them.”⁶⁵

4. REQUIREMENTS FOR MANUFACTURING AND SUPPLY

Many ingredients used in food processing and manufacturing have several suppliers, which the manufacturing and processing industry will use depending on seasonality, availability, supply flexibility and price of the ingredient. Australian sourced ingredients, such as milk, wheat or salt, may be available throughout the year, but crops such as fruits and vegetables are seasonal and in order to ensure a supply of processed product it may be necessary to import such commodities when out of season in Australia. Often this may require that the commodity is sourced from more than one country.

The challenge for industry is to ensure that when a food is made predominantly with Australian produce, or alternative sources come from overseas, that it is labelled as such, while also retaining the use of the recognised term ‘Made in’ as an indication that the process of manufacturing along with the associated jobs, technology, safety and quality standards, occurred in Australia.

It is essential to also consider practical issues related to the relevance of the information provided on the label when packaging and labelling may be required to be produced several months in advance of production, and, in the face of natural disasters and disruption to the supply chain there may be a need to temporarily substitute the source of one or more ingredients to ensure continuity of business and maintain product availability.

Industry requires flexibility in the way that legislation is applied to a particular batch or package, taking into account that sourcing of ingredients may be subject to variations in price and seasonal fluctuations in supply, while also ensuring that consumers are not misled about the origin of the food and its ingredients used by the manufacturer.

The current test for “Made in Australia” focuses on substantial transformation – or where the jobs are. This is important and meaningful information for consumers that should not be lost.

Consequently the AFGC recommends an approach that adds to, rather than does away with, the current test.

The AFGC proposes that a sensible way forward that avoids further confusing consumers and provides additional meaningful information about the source of their food and can be summarised as follows:

Made in Australia with Australian and imported ingredients

- Substantial transformation occurs in Australia (current test)
- 50% or more of the total costs attributable to production or manufacturing occurred in Australia (current test)
- 50% or more of ingredients sourced from Australia (new test)

Made in Australia with imported and Australian ingredients

- Same as above except 5 – 50% of ingredients sourced from Australia

Made in Australia with imported ingredients

- As above except less than 5% of ingredients sourced from Australia

Product of Australia

- Remains the premium claim – every significant ingredient or component sourced in country and virtually all manufacturing processes occurred in country – in accordance with WTO agreements.
- Needs to be more effectively promoted as the premium claim.

AFGC proposes that the country of origin statement should be based on the origin of the ingredients and associated costs of manufacturing, averaged over the normal annual business cycle and based on forward supply and production contracts.

Establishing an annualised average of content as the basis of the CoOL declaration will not only be a practical measure for enforcement, it will also enable businesses to maintain continuity of production and supply of product in the event of interruptions to supply contracts in circumstances beyond the company's control, such as may occur with natural disasters. If Australian ingredients are temporarily unavailable, this would allow the use of imported ingredients provided the average annual content continues to comply or until such time as new labels can be provided that specify a change in the country of origin declaration.

The Consumer and Competition Act does not place limits or define other terms that may be used to describe the origin of a food. Terms such as Packed in, Blended in, Bottled in etc may be used to indicate where this activity has taken place particularly when the substantial transformation or proportion of ingredients do not meet regulatory definitions. However, these terms should also provide greater clarity for consumers about the proportion of local and imported content. AFGC recommends this be on the same basis as that applied to Made in through the use of industry guidelines, ensuring a consistent approach to assist consumers understanding, and avoiding additional regulatory complexity.

5. CONCLUSION AND RECOMMENDATION

The AFGC is **opposed** to the proposed Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) on the grounds it prohibits labelling related to where processed value added food products are made and, in doing so, fails to provide consumers with the option to support employment in Australia, particularly rural and regional employment.

The AFGC is also **opposed** to the substance of the proposed Bill on the grounds that it imposes unreasonable and unwarranted conditions on the requirement for the use of the term “made of Australian ingredients” in labelling of packaged foods without provision for alternative labelling requirements. Products manufactured in Australia using Australian ingredients at a level less than 90% Australian content by weight will be in an unenforceable and unregulated market, resulting in confusion and uncertainty for consumers.

As an alternative, AFGC suggests the following could assist in clarifying the intent of current requirements:

- **Product of / Grown in Australia** remains the premium claim, consistent with international obligations, but should be more effectively promoted to consumers.
- **Made in Australia from Australian and imported ingredients** means that at least 50% of the total food content (by weight or volume) of the finished product originates from Australia and at least 50% of the cost to produce the product was incurred in Australia.
- **Made in Australia from imported and Australian ingredients** means that 5 – 50% of the total food content (by weight or volume) of the finished product originates from Australia and at least 50% of the cost to produce the product was incurred in Australia.
- **Made in Australia from imported ingredients** means that less than 5% of the total food content (by weight or volume) of the finished product originates from Australia but that at least 50% of the cost to produce the product was incurred in Australia.
- This determination is made on the basis of supply contracts and other evidence that documents the intention of the business in sourcing ingredients aggregated on an annual basis of production.
- Disruption of the supply due to circumstances beyond the company’s control, and therefore changes to supply contracts that may source imported ingredients, are permitted for a limited period of time provided the average annual content determined on an annual basis complies with requirements, or until such time as new labels can be provided.

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