Dr Richard Grant
Acting Secretary
Select Committee on Australia's Food Processing Sector
Department of the Senate

Sent via email: foodprocessing@aph.gov.au

Friday 2 March, 2012

Dear Dr Grant,

CCA RESPONSE TO QUESTION ON NOTICE

Please find following detail in regard to a question I took on notice at the Hearing of the Senate Select Committee into Australia's Food Processing Sector, held on Friday 10 February at the NSW Parliament House in Sydney.

> ***1. Question one – Hansard, page 38***
> ***CHAIR:*** *You have raised some very important issues and points. On the consistency of labelling across Australia, are we becoming more divergent or are we trying to bring things closer to together? Can you give us an example of some of the specific issues that you might face in respect of labelling between states?*
> ***Mr Pinneri:*** *I cannot give you specific examples right now.*
> ***CHAIR:*** *Are you prepared to do that on notice?*
> ***Mr Pinneri:*** *We are.*

In Coca-Cola Amatil's (CCA) submission to the Committee we referenced the need for:

- A national streamlined approach for labelling and product composition to ensure that a product manufactured anywhere in Australia can be sold legally, nationally.

In line with this, we outlined the following as key aspects for consideration:

- The complexity and cost associated with multiple labelling regulatory schemes that are not entirely aligned;
- A lack of recognised legal definitions pertaining to consumer value chains for food; and
- The need for greater co-regulation and alignment between oversight and enforcement agencies.

In respect to labelling between states, we draw you attention to the recently introduced Container Deposit Legislation in the Northern Territory. Setting aside our view of the effectiveness of container deposits, the major obstacle to industry involvement (and investment) in implementing the legislation was uncertainty over the legality of the legislation.

In preparing for its introduction industry was informed that the Northern Territory Government, whilst confident of its legal position, would be seeking permanent exemption from the Mutual Recognition Act.

It is always in industry's interest to have national regulation of a national economy and that is why all governments agreed to provide some level of protection to industry via the Mutual Recognition Act. As stated on the COAG website:

> *"The purpose of mutual recognition is to promote economic integration and increased trade between participants. It is one of a number of regulatory techniques available to governments to reduce regulatory impediments to the movement of goods and provision of services across jurisdictions."*

To provide you with an understanding of some of the costs associated with a very minor label change required to meet state-based legislation of this nature, I draw on actual costs incurred when we were required to change our labelling to comply with the South Australian Container Deposit Scheme increase to deposits from 5c to 10c in 2010.

The most obvious cost is the change to label plates and the human resource to manage this process. This cost was in the order of half a million dollars. Additionally, other costs to industry not often considered included removing non-compliant stock from the supply chain – at retailer requests – as the change-over date approached; and the cost of applying stickers to some pack types that are bulk purchased – a practice important to minimising the input costs associated with the manufacture of packaged products. In this specific case, we are continuing to wear the costs of compliance two-years on due to our glass bottles bulk-ordered prior to the change having many labelling requirements etched onto them at the time of order.

I would like to make the point emphatically that any exemption granted to the Mutual Recognition Act, would set a precedent for future exemptions; exemptions which will result in significant compliance costs carried by the already under-pressure manufacturing industry of Australia's food processing sector.

Additionally, we draw your attention to a recent example of labelling complexity navigated at SPC Ardmona. While it is not an example in respect of labelling between states, it is an example of complexity and cost resulting from multiple labelling regulatory schemes and enforcement agencies – specifically the ACCC's oversight of Australian Consumer Law and the FSANZ Food Standards Code – and acts as evidence of the need for both recognised legal definitions pertaining to consumer value chains for food, and of the need for greater co-regulation and alignment between oversight and enforcement agencies.

We pride ourselves on providing consumers with the most accurate information. We create informative labels and are careful in providing consumers information that is correct and will not mislead.

A recently conducted internal label review sought to identify any potential areas of risk in relation to both Australia's consumer protection laws and food standards regulation.

Incorporated in the review was an expert analysis of our claims and descriptors, and among the outcomes was a significant shift in labelling for our processed fruit range as we decided that continued use of a “Natural Fruit Juice” claim was too high a risk for us to take given the ambiguity that remains around the definition of “Natural”. While we were previously confident that our use of the term was aligned with the FSANZ Food Standards Code Standard 2.6.1 Fruit Juice and Vegetable Juice, this is no longer the case with consumer protection laws seemingly taking precedence over the Food Standards, and no recognised legal definition of “natural” in Australia’s consumer protection laws. Instead, industry is faced with the following as a guideline for “natural” claims:

> ***Natural***
> *‘Nature’, ‘natural’, ‘mother nature’ or ‘nature’s way’ are a few terms that may be misused on food and beverage labels. These claims often suggest that a product is superior because it has certain ‘natural’ characteristics as opposed to being processed or artificial or otherwise removed from its natural form. The Macquarie Dictionary14 refers to something that existed in, or was formed by nature; i.e. not artificial, or something that is based on the state of things in nature; i.e. constituted by nature, or is true to nature, or closely imitating nature. ‘Natural’ claims imply that the product is made up of natural ingredients, i.e. ingredients nature has produced, not man made or interfered with by man. It may be misleading to use the term ‘natural’ to describe foods that have been altered by chemicals. In some cases, the claim ‘natural’ is not too dissimilar to the claims of ‘contains no added food additives or artificial preservatives’, such additional qualification to the claim ‘natural’ is helpful in producing a label that is unlikely to mislead the consumer. Consumers may view what is ‘natural’ differently to manufacturers and food technologists. When providing a label with a claim that the product is ‘natural’, thought should be given to what the consumer would think. In those cases where the term ‘natural’ meets a technical definition, a code or a standard, and this information is not available to the consumer, the consumer is left to draw their own conclusion and may therefore be misled.*
> - *ACCC, Food and Beverage Industry, Food descriptors guideline to the Trade Practices Act, November 2006*

Costs for the review ran into the multiple hundreds of thousands with the required label changes an increase on this. Our standard legal fees for external clarification of a single label claim and subsequent label checks run at five figures; and despite the current operating environment this is a cost we deem necessary for every new or changed label across our product portfolio given the uncertainty we feel in navigating the current food labelling environment.

During a time of unprecedented pressure from imported products due to the high Australian dollar, and whilst undergoing a process of right-sizing within our own business, ambiguity that requires investment is unhelpful, and an expense that requires attention if Government is to ensure a fair and level playing field for Australian manufacturers.

We are not endorsing for over-prescribed regulation, but rather for the opportunity for industry to play a role in articulating key definitions with regulators, and for alignment between agencies that means there is no ‘guessing’ in our compliance efforts; and greater

confidence and trust in Australian-produced brands and the claims they make, amongst Australian consumers.

I trust this information provides greater insight into the issues currently faced, and adequately addresses the question I took on notice during the Hearing, but invite you to make contact with me if your require further clarification.

Again, thank you for the opportunity to provide input to this important review process.

Yours sincerely,

Vincent Pinneri
Managing Director
SPC Ardmona
Food Services Division of Coca-Cola Amatil (Aust)