SUBMISSION TO SENATE SELECT COMMITTEE

ON AUSTRALIA'S FOOD PROCESSING SECTOR

AUSTRALIAN MADE, AUSTRALIAN GROWN CAMPAIGN

February 2012

SUMMARY

Australian Made Campaign Limited (AMCL) welcomes the opportunity to make this submission to the Senate Select Committee on Australia's Food Processing Sector. This submission will focus on food labelling, specifically country of origin labelling.

AMCL recognises that the food processing sector, as with much of the broader manufacturing sector, is under increasing stress in Australia. The reasons for this include a more challenging retail environment and a loss of competitiveness due to the high level of the $AUD.

The manufacturing sector is fundamentally important to the Australian economy, especially in terms of jobs, skills and training opportunities, exports and innovation. It is also critical to the fabric of Australian society because of the multiplier effect of the opportunities it creates and its strategic importance to Australia's economic and national security. The food processing sector is a major part of that, with particular importance as a regional employer and for food security reasons.

The AMAG logo supports food processing in Australia by helping businesses clearly identify to consumers that their products are Australian. It does this in conjunction with a campaign encouraging consumers to look for the logo when shopping.

Consumers are increasingly concerned about the origins of the food they eat. Such concerns are driven by a number of factors – economic, health & safety and environmental. Research clearly shows that consumers have a strong preference for the fresh and processed food they buy to be Australian.

There are steps that can be taken in the area of country of origin labelling that will improve the competitive position of Australian food products, particularly in the domestic marketplace. This will be beneficial to Australian producers and processors.

AMCL's position is that:

- all food products should be required to carry a country of origin claim;
- the definition of 'substantial transformation' needs to be made more exclusive in relation to food products so that it is more difficult for certain products, particularly those with a high imported content, to meet the substantial transformation test necessary for a 'Made in Australia' claim;
- and an administrative mechanism should be established to enable a company to obtain a ruling as to whether its product meets the 'substantial transformation' test;
- the use of qualified claims such as 'Made in Australia from imported and local ingredients' should no longer be permitted unless the product meets the tests for an unqualified 'Made in Australia' claim;
- The Government should actively and financially support the promotion of the Australian Made, Australian Grown logo as Australia's official country of origin symbol, in both the domestic and export markets.

This submission follows recent submissions to the inquiries by the Senate Economics Committee into the 'Truth in Labelling Laws' (October 2009) and the 'Trade Practices Amendment (Australia Consumer Law) Bill' (April 2010) and also to the Blewett Review of Labelling Law & Policy (May 2010). Copies of each of these submissions will be made available to the Select Committee if desired.

BACKGROUND – AUSTRALIAN MADE, AUSTRALIAN GROWN CAMPAIGN

AMCL is the not-for-profit public company set up in 1999 (by the Australian chamber of commerce network) to administer the Australian Made, Australian Grown (AMAG) logo.

The AMAG logo is a registered certification trade mark governed by a Code of Practice which is approved by the ACCC. It was launched in 1986 by the Hawke Government.

The AMAG logo is the best known and most trusted country of origin symbol in Australia. It is recognised by 94% of Australian consumers and trusted over other country of origin identifiers, such as flags, maps and pictures of animals, by 85%. (*Roy Morgan Research, 2009*)

AMCL administers the logo in accordance with a Deed of Assignment and Management Deed with the federal Government and reports annually to the Department of Innovation, Industry, Science and Resources on its operations.

AMCL's core funding is derived from licence fees paid by companies to use the logo. It receives no financial support from Government for its core operations, although DIISR currently provides some grant funding enabling AMCL to support its 'Buying Australian at Home and Abroad' program.

Over 1700 companies, large and small, are currently licensed to use the AMAG logo on about 10,000 products sold here and around the world. 212 of these companies (ie 12.5%) are in the food and beverage sector.

Since its inception in 1986, the logo has been available for use with two descriptors – 'Australian Made' and 'Product of Australia' – with compliance criteria consistent with the provisions of the Trade Practices Act (now the Australian Consumer Law).

In early 2007, as a result of an initiative of the Federal Government, the rules governing the use of the AMAG logo were rewritten to accommodate an 'Australian Grown' descriptor for use on fresh produce and processed foods with a high Australian content. This was done in conjunction with the Department of Agriculture, Fisheries and Forestry, the Department of Innovation, Industry, Science and Research, the ACCC, and IP Australia.

Last year the Code of Practice was further amended to, among other things, introduce an 'Australian Seafood' descriptor and to exclude certain processes from meeting the 'substantial transformation' test for food products.

A copy of the Australian Made, Australian Grown Logo Code of Practice is attached.

DOES BEING AUSTRALIAN MATTER?

On balance the answer clearly is yes, although of course it varies across different categories of goods. Certainly the evidence is strong that it is an important consideration for food products.

Consumer research undertaken by the Roy Morgan Group at the time AMCL introduced the 'Australian Grown' descriptor revealed that:

- for 89% of consumers, it was 'very important'/ 'important' that fresh food is Australian; and
- for 82%, it was 'very important'/ 'important' that processed food is Australian.

In both instances the significant majority of the responses was in the 'very important' category.

There have been a number of major nation brand studies in recent years that have substantiated all the anecdotal evidence that Australia is highly regarded globally – as a country , as a people, as a place to visit. Generally speaking it is not well known for its products, other perhaps than wine, but the connection to Australia in the marketplace is a positive asset for our exporters.

Between 2004 and 2010 AMCL received funding from DIISR for a project to promote the AMAG logo as an export brand. This involved AMCL undertaking a strategic branding campaign involving retail and trade show promotions in the USA, Canada, Dubai, Singapore, Thailand, China and Hong Kong. All of the activities involved extensive research and the findings were that the AMAG logo is a very effective connector to Australia – which is exactly what a country of origin symbol needs to achieve.

COUNTRY OF ORIGIN LABELLING FOR FOOD

One of the primary purposes of food labelling is to provide consumers with enough information to enable them to make informed choices.

There has been ample evidence in the media for some time of growing consumer concerns about the country of origin of fresh foods and of ingredients in processed food products. Drivers of these concerns include anxieties about food safety (as in the melamine in milk scandal) and environmental impact issues (food miles).

In addition, many consumers recognise the quality, freshness and high standards of Australian grown produce and the value of supporting the Australian economy and the country's farmers and fishermen by buying locally produced products whenever possible.

The 'Australian Grown' descriptor was introduced to the AMAG logo in response to these concerns of consumers and producers to provide a simple and effective method of identifying Australian produce. It has been enthusiastically taken up by major retailers including Coles, Woolworths, Aldi and, more recently, IGA/Metcash.

The Food Standards Code currently requires a country of origin claim to be made on packaged foods and unpackaged pork, seafood and fruit and vegetables. Fresh beef and chicken do not require a country of origin label, nor does food in the first group when mixed with food in the second group. This is inconsistent and confusing.

AMCL believes that country of origin labelling should be required for all foods and, for the benefit of both businesses and consumers, the rules should be consistent, clear and as simple as possible, with:

- one set of rules for all States and Territories

- one set of rules for all types of products (food and otherwise)
- rules to apply equally to all types of food products.

AMCL does not support calls for mandatory country of origin labelling for all ingredients of food products because of the complexity involved and the costs to business of compliance.

A simple and agreed set of criteria, as was developed by the Ministerial Working Party in 2007 for the 'Australian Grown' descriptor, is sufficient. A 'Grown in' or 'Made in' claim either can or cannot be made for the product.

The new 'Grown in ...' representation in the ACL provides such a framework for claims relating to the major ingredients of a product, although it is AMCL's view that the threshold levels set are too low. The AMAG logo with the words 'Australian Grown' continues to provide a premium claim for products where at least 90% of the content by weight is grown in Australia.

SUBSTANTIAL TRANSFORMATION AND FOOD PRODUCTS

Under the ACL legislation a person can safely claim that a good was made in a country where:

- the good had been 'substantially transformed' in that country; and
- 50% or more of the cost of producing or manufacturing the good occurred in that country.

Substantial transformation is defined in the ACL as "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". *(ACL Part 5.3 Section 255(3))*

Importantly it relates to manufacturing processes and costs of production, rather than content. These provisions are also the basis of AMCL's criteria for use of the AMAG logo with the claim "Australian Made" or equivalent.

But what this means though is that a food product which contains a high percentage of imported ingredients can still legally be described as 'Australian Made', provided it meets the twin criteria of 'substantial transformation' in Australia and at least 50% of costs incurred locally.

AMCL's major area of concern was in the interpretation of the term 'substantial transformation' in regard to food products, particularly as set out in the ACCC booklet '*Food and beverage industry: country of origin guidelines to the Trade Practices Act*'. Under these guidelines, mixing, homogenisation, coating and curing are all processes "*likely to be considered as substantial transformation"*.

Thus, homogenised milk, mixed diced vegetables, blended fruit juices, battered fish fillets, crumbed prawns and ham and bacon may all qualify as 'Australian Made' **even though all the major ingredients may be imported**, as long as at least 50% of the cost of production is incurred in Australia.

This is out of step with community expectations and the source of much of the criticism in the media about Australia's "confusing" labelling laws.

In response, AMCL recently amended its Code of Practice to, among other things, exclude certain processes from the definition of substantial transformation. These changes were supported by the federal Government (through the Dept of Innovation, Industry, Science & Research) and approved by the ACCC.

AMCL believes that the average consumer, seeing the words 'Australian Made' on a product, might reasonably believe that the product was made from ingredients of Australian origin, certainly the major or characterising ingredients. For this reason, AMCL has moved to specifically exclude a range of processes from the definition of substantial transformation for the purposes of the AMAG Logo Code of Practice. These include:

- freezing, canning or simple preserving processes associated with packaging
- simple mixing or blending of food ingredients, where the resulting product is not substantially different to the separate ingredients
- juicing – extraction of juice from fruit
- homogenisation
- seasoning
- marinating
- curing – the treatment of meat with curing salts, as in ham or bacon
- roasting or toasting – e.g. of coffee beans, nuts or seeds.
- coating – as in crumbing prawns or battering fish fillets

The result is that goods which have only undergone the above processes will no longer meet the substantial transformation test required by AMCL and as such cannot use the logo with the claim 'Made in Australia'. If the product cannot meet either the 'Product of' or 'Grown in' tests, then it cannot use the AMAG logo.

AMCL recommends that the Government make specific regulations under the ACL which prescribe changes which are considered to be (or not to be) fundamental changes, and that it uses these regulations to tighten up the existing ACCC guidelines on substantial transformation in relation to food products.

AN ADMINISTRATIVE PROCESS

Substantial transformation is defined in the ACL as "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".

This definition is far from providing a clear and objective criterion against which to assess claims. Although the ACCC has published a series of guidelines on country of origin claims in which it expresses its views on what may or may not constitute substantial transformation, it acknowledges that "*interpretation of the law will always ultimately be a matter for the courts*" *(ACCC. Country of origin claims and the Australian Consumer Law 2011.p.3)* and such interpretation occurs on a case by case basis.

There is currently no mechanism by which a manufacturer may obtain a definitive answer as to whether it may safely claim that its product is 'made in Australia'. A company may hesitate to make a country of origin claim for fear that competitors will challenge its validity.

(This also places AMCL in the invidious position of administering a code of practice which sets out compliance criteria for goods, but being unable to objectively determine whether a particular good meets the criteria).

The Government should establish an administrative process to give Australian manufacturers and producers greater support and certainty in respect of making country of origin claims for their products.

QUALIFIED CLAIMS

The ACCC's country of origin guidelines state that where a company is unable to make an unqualified claim for their product, such as 'Made in Australia', they may make a qualified claim. *(ACCC. Country of origin claims and the Trade Practices Act. 2006.p.18)*

Qualified claims do not have to meet the substantial transformation or 50% content tests.

A qualified claim may take the form "Made in Australia from imported and local ingredients".

AMAG takes the view that where an unqualified 'Made in Australia' claim cannot be supported, the qualified claim should not include the words 'Made in Australia'. The current practice is illogical and confusing for both consumers and manufacturers. The words 'Made in Australia' or 'Australian Made' should be reserved exclusively for products which can meet the tests set out in the legislation.

AMCL recommends that the ACL should include specific provisions on use and wording of qualified claims and that these should include a prohibition on the use of the words 'Made in ...' or equivalent where the product does not meet the criteria for an unqualified 'Made in ...' claim.

GOVERNMENT TO RE-ENGAGE WITH AMAG LOGO

AMCL's view is that the federal Government should formally re-engage, both financially and in practice, with the AMAG logo campaign as an effective means of promoting the products of Australia's food processing sector (along with all other Australian products and produce).

In the immediate context, this could include a **high profile publicity campaign:**

- very timely - would be well received by the public, well received by business and well received by the trade union movement;
- the AMAG logo has the necessary credibility to be the centrepoint of such a campaign;
- to be aimed at the **selling/marketing** of Australian products and produce and resultant benefits to the Australian community;
- emphasis to be on the high standards, safety and otherwise, embodied in Australia's produce and manufacturing sectors;
- educating consumers on the inherent advantages of buying/using Australian products/produce:
    - jobs;
    - skilled training opportunities, especially for young Australians;

    - high standards and design rules for Australian manufacturing – quality products;
    - high health standards plus clean green environment – produce can be consumed with confidence;
    - support for our farmers, fishermen, manufacturers and regional communities;
- the scale to be determined by the level of Government support;
- the campaign to be delivered by AMAG – electronic, print, outdoor and online.

In the longer term context, **Australia should have an official country of origin symbol** for products/produce, endorsed by the federal Government. It should be the AMAG logo because of its enormous market capital, widespread use and the very close and long standing links between the logo and the federal Government.

Such a symbol would:

- help our exporters benefit more from Australia's good global standing;
- introduce greater consistency, and therefore effectiveness, into Australia's global branding;
- provide Australia's public and private sectors with a common branding platform, thereby reducing the current dissipation and wastage of resources; and
- an official symbol, that Australia is prepared to protect, could offer real assistance to exporters in combating counterfeiting or copying of products:
    - official status of symbol would discourage it being copied;
    - if goods carrying the symbol were copied but the symbol was not, that would at least create a point of difference in the marketplace;
    - particularly important for products such as food & beverages and safety equipment ;
    - but very important for SMEs generally – lack of capacity to defend own brand.

Leaving the mineral and resources sector aside, the current business environment for those in the trade exposed sectors is very challenging. It is timely that the Government allocate adequate resources to the marketing of Australian products and produce, both here and overseas.

Clear, effective country of origin branding for our products and produce will be an important part of such a campaign.

SUMMARY OF RECOMMENDATIONS:

1. country of origin labelling should be mandatory for all food products, packaged or unpackaged.

2. Under the ACL, Federal Government should make regulations which prescribe changes which are considered to be (or not to be) fundamental changes, and that it uses these regulations to tighten up the existing ACCC guidelines on substantial transformation in relation to food products.

3. Under the ACL, Federal Government should provide a simple administrative mechanism whereby a manufacturer who is uncertain as to whether it may make a country of origin claim in respect of a good is able to apply for and receive a ruling on the matter, for an appropriate fee and within a reasonable timeframe.

4. The ACL should include specific provisions on use and wording of qualified claims and that these should include a prohibition on the use of the words 'Made in ...' or equivalent where the product does not meet the criteria for an unqualified 'Made in ...' claim.

5. The federal Government should formally re-engage, both financially and in practice, with the AMAG logo and should participate with AMCL in a major publicity campaign promoting the AMAG logo as branding for genuine Australian products and produce.

6. The federal Government should use the powers within the ACL to prescribe the AMAG logo as Australia's official country of origin symbol.