



## **Australian Industry Group Submission**

Rural and Regional Affairs and Transport  
Legislation Committee  
Inquiry into the *Competition and  
Consumer Amendment (Australian  
Food Labelling) Bill 2012*

**26 October 2012**

**Australian Industry Group response to the Rural and Regional Affairs and Transport Legislation Committee Inquiry into the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012***

**Introduction**

The Australian Industry Group (Ai Group) Confectionery Sector represents manufacturers of chocolate, sugar and gum confectionery, suppliers of ingredients, machinery, packaging materials and services to the industry, and wholesaler and distributor firms.

Ai Group has approximately 150 confectionery sector members operating in Australia and New Zealand.

The Australasian confectionery industry employs more than 8,700 Australians and New Zealanders.

The Australian confectionery industry's direct market value is in excess of \$2.9 billion, with New Zealand's being \$494 million.

Major confectionery manufacturing plants are principally located in New South Wales, Tasmania and Victoria, including in a number of regional locations (eg Ballarat and Lithgow) and to a lesser extent South Australia, Queensland and New Zealand where SME business are based.

The Ai Group Confectionery Sector welcomes the opportunity to provide the following comments on the Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012*.

**Summary of Ai Group's Confectionery Position on the Food Labelling Bill**

The *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012* seeks to implement changes to the designation and regulation of country of origin labelling for food in Australia. In particular the amendments propose to:

- i) create a section in the *Competition and Consumer Act* that deals specifically with country of origin food labelling claims; and
- ii) requires that country of origin food labelling be based on ingoing weight of the ingredients and components, excluding water.

The Ai Group Confectionery Sector does not support an approach based on proportion of total weight of ingoing ingredients (excluding water) as this over simplistic proposition does not support Australian manufacturing or Australian jobs.

We need a country or origin food labelling system that deals with where a product is made or produced.

Secondly, creating a section in the *Competition and Consumer Act* that deals solely with country of origin food labelling claims will not centralise country of origin food labelling in consumer law, nor will it resolve the differences between Australian and New Zealand.

The key issue seems to be about consumer clarity and understanding and this should be addressed through appropriate education.

### **Specific comments**

The Ai Group Confectionery Sector is particularly concerned that the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012* seeks to amend the *Competition and Consumer Act 2010* by creating new country of origin food labelling that is based on the ingoing weight of the ingredients and components (excluding water).

Country of origin food labelling requirements should provide meaningful and credible information that enables informed consumer choice, while also providing a flexible and pragmatic approach that supports Australian producers and manufacturers.

Although unclear, it appears to the Ai Group Confectionery Sector that the amendments will permit a regime of country of origin food labelling that, simply put, allows for:

<b>Claim</b>	<b>Conditions</b>
“Grown in xxx”	For fresh produce to identify the country/countries in which the food was grown
“Made of xxx ingredients”	For packaged food where 90% or more of the total weight (excluding water) is comprised of ingredients or components that are grown in Australia – excludes weight of packaging material
Possibly “Made of Australian and imported ingredients” Or “Made of imported and Australian ingredients”	For packaged food where less than 90% of the total weight (excluding water) is comprised of ingredients or components that are grown in Australia – excludes weight of packaging material – whilst “Made of Australian ingredients” is not permitted, it is unclear what might be allowed, ie “Made of Australian and imported ingredients” or “Made of imported and Australian ingredients” depending on the quantity of Australian to imported ingredients. Or will nothing be permitted for products containing less than 90% Australian ingredients?

It appears the Bill specifically precludes “Made of Australian ingredients” for packaged food where less than 90% of the total weight (excluding water) is comprised of ingredients or components that are grown in Australia. However, it is unclear as to what statements will be permitted – possibly “Made of Australian and imported ingredients” or “Made of imported and Australian ingredients” depending on the quantity of Australian to imported ingredients. Or will nothing be permitted for products containing less than 90% Australian ingredients?

What tolerance will there be for seasonality? For products claiming “Made of Australian ingredients” what tolerance will there be for seasonality? Is the 90% or more threshold and average figure, over a year, or minimum figure?

Meanwhile “Made in Australia” or “Product of Australia” cease to be permitted in relation to food. The Ai Group assumes that the status of other qualified claims are likely not be permitted as they also include reference to “Made in Australia ...” (see below examples).

Whilst the draft amendments are unclear, the Ai Group queries the future of other terms like “Packed in ...” claims.

<b>Claim</b>	<b>Conditions</b>
Made in Australia OR Product of Australia	Not permitted
Made in Australia from local and imported ingredients	Not permitted
Made in Australia from imported and local ingredients	Not permitted
Made in China. Packed in Australia.	Not permitted
Made in Australia from a blend of local and imported ingredients subject to seasonal availability	Not permitted
Packed in Australia	Does this claim continue to be permitted and with what meaning?

The proposed separate approach for food does not align with the “general” country of origin representations made about “goods” (*Competition and Consumer Act 2010*, Schedule 2, Chapter 5, Part 5-3) that, in particular, permits “Made in Australia” providing the goods have been substantially transformed in the claimed country and 50% or more of the total costs of manufacturing the goods ie the cost of materials including packaging, overheads and labour have occurred in the country claimed.

The Bill proposes exclusion of packaging materials in the cost of manufacturing calculation. Packaging can be a significant component of a product and key selling proposition, for example research and development funds have been used to create innovations like resealable packaging, dispensing and interactive mechanisms that potentially may offer businesses a unique competitive advantage. This Bill will undermine new product development in packaging.

The Ai Groups does not support replacing the “Product of xxx” and “Made in xxx” statements with “Made of xxx ingredients” statement, as proposed by this Bill.

The proposed amendments under the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012* do not support Australian manufacturing or Australian jobs. This is very concerning to the Australian Industry Group.

Australian manufacturing and Australian employment are critically important to a strong Australian economy, skilled workforce and competitive food manufacturing sector. For these reasons food producers and manufacturers need to be able to claim Australian production and manufacturing on their food labels.

Under the proposed regime a product could potentially be labelled “Made of Australian ingredients” if more than 90% of the ingredients are Australian, yet the manufacturing process may take place offshore. How does this support and sustain Australian employment and manufacturing? Equally companies producing foods containing less than 90% but more than 50% Australian ingredients that manufacture in Australia and employ Australians cannot promote their contribution to the local economy.

Omission of provisions that enable “Product of ...” and “Made in ...” to be made on food will also impact import and export trade. Separate labels will need to be made for the Australian market, increasing costs and reducing manufacturing efficiencies through shorter runs and increased inventory as multiple labels will need to be carried for local and export production. The same will apply for imported foods that will need to change their labels to remain lawful. “Product of ...” and “Made in ...” terms are embedded in World Health Organisation agreements and to deviate from these statements for food labelling would introduce regulatory trade barriers.

The proposed regulatory reforms in the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012* will supersede requirements in the *Australia New Zealand Food Standards Code* and circumvent the Legislative and Governance Forum on Food Regulation (FoFR) and the role of Food Standards Australia New Zealand (FSANZ) in developing amendments to the Food Standards Code.

Furthermore, it is critical that a regulatory impact statement is undertaken before a decision is made to amend the country of origin food labelling requirements under the *Competition and Consumer Act 2010*, or for that matter to implement any country of origin food labelling reforms.

Whilst the Ai Group is aware of interest to reform the country of origin food labelling designations and the need for improved clarity, the system needs to recognise where a product is made and the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012* does not provide an appropriate solution in its current form. Where a product is made is also important consumer information.

It is clear that the meaning of country of origin food labelling also differs in different sectors and herein stem some complexities associated with minimally processed goods. However, for the confectionery industry that imports most of its cocoa ingredients for chocolate production (a key ingredient) – as cocoa products are not available locally in sufficient commercial quantities – the processing of chocolate is significantly complex undergoing substantial transformation to warrant the claim “Made in Australia” or “Made in Australia from local and imported ingredients”.

The premium statements of “Grown in xxx”, “Product of xxx” and “Made in xxx” are sound and valid statements, as are “Australian owned” statements – why else would they be appropriate for non-food goods? The alleged consumer confusion associated with these designations should be able to be overcome by education both in terms of educating food businesses and consumers.

The Ai Group Confectionery Sector, however, believes there is scope for clarity and execution of qualified claims, for example “Made from local and imported ingredients” and other terms such as “Packed in Australia”. Despite the intent, these claims do not provide reference to any country of origin, unlike “Made in Australia from local and imported ingredients” or “Made in China from local and imported ingredients. Packed in Australia” that do.

“Made of Australian ingredients” doesn’t mean that the product is Made in Australia. It is feasible that Australian glucose syrup, sugar and gelatine could be sent to China for the manufacture of sugar confectionery at much lower packaging, labour and overhead costs yet as long as there is more than 90% ingredients from an Australian source the country of origin declaration would read as “Made of Australian ingredients” and consumers will be none the wiser as to where the product was actually made.

The Ai Group would support a review of country of origin provisions essentially to improve consumer understanding and guidelines for business to improve compliance with the current provisions.

Examples the Ai Group has seen that are unlikely to comply with Standard 1.2.11- Country of Origin Labelling Requirements of the *Australia New Zealand Food Standards Code* include:

- Made in EU
- Packed from local and imported product – 100% Australian owned business
- Omission of any reference to country of origin
- PACKED IN AUSTRALIA using local and imported ingredients
- Made and packed in Australia and Hong Kong from imported ingredients
- Claiming Product of Australia in place of Made in Australia (the product contains imported cocoa ingredients)

### **Related inquiries**

*Labelling Logic : Review of Food Labelling Law and Policy (2011)* recommended that mandatory requirements for country of origin labelling on all food products be provided for in a specific consumer product information standards for food under the *Competition and Consumer Act 2010* rather than in the *Australia New Zealand Food Standards Code* (the Code) (Recommendation 41).

The Legislative and Governance Forum on Food Regulation (FoFR) did not support this recommendation, noting that it did not support the proposed changes to the

legislative framework for country of origin labelling, and proposed to retain the current standard in the *Food Standards Code*.

*Labelling Logic* also recommended that for foods bearing some form of Australian claim, that a consumer friendly, food-specific country of origin labelling framework, based primarily on the ingoing weight of ingredients and components (excluding water) be developed (Recommendation 42).

The FoFR did not support this recommendation either, continuing to provide its support to the existing framework and definitions for Australian country of origin labelling.

In addition, the FoFR recommended that existing country of origin publications, guidelines and education materials be reviewed through a consultative process and possibly develop an education campaign to clarify the requirements. Ai Group believes there is value in undertaking this body of work.

On 11 October 2012, Australian Competition and Consumer Commission (ACCC) Chair Rod Sims launched new education material designed to provide clarity of the country of origin labelling claims used in connection with foods. Whilst the Ai Group Confectionery Sector applauds the ACCC for this new fact sheet, it believes there is more to be done. It is the confectionery industry's view that consumer and industry education needs to be increased particularly in the area of qualified claims.

Mr Sims also said at this time, that

*“the Australian Competition and Consumer Commission (ACCC) does not believe there is an essential problem with the current classifications. The problem is people's understanding of what they mean.”*

In rejecting the *Labelling Logic* recommendation the FoFR noted that the proposal for country of origin labelling to be determined based on ingoing weight of ingredients failed to recognise the intent of “Made in ...” statements, would impose costs on business and explained its rationale for rejecting the proposed changes in the following manner:

*“the proposed framework does not recognise the intent of “Made in” claims, which support the important contribution the manufacturing sector makes to the local economy (and community) by considering a range of inputs including raw materials (ingredients), packaging, labour and associated overhead costs. Depending on the type of claim used, the current regulatory framework gives recognition to the contribution of local production and manufacturing, as well as the origin of the ingredients and components of a food product ... previous economic analysis suggests that this approach may have a negative impact on both food manufacturers and local suppliers, potentially decreasing the competitiveness of Australian food businesses and increasing the demand for imported foods.”<sup>i</sup>*

Independent Senator Nick Xenophon introduced a similar Bill into Parliament “*Inquiry into the Food Standards Amendment (Truth in Labelling) Bill 2009*” that has lapsed.

The Legislative and Governance Forum on Consumer Affairs, Chaired by South Australian Deputy Premier and Minister for Business Services and Consumers, the Hon John Rau, also has country of origin food labelling in its sights.

Reporting in August 2012, *The Senate Committee Inquiry into Australia's food processing sector* made various recommendations with respect to country of origin food labelling, including regulatory reform to ensure the provisions are clearer; querying whether the current *Competition and Consumer Act 2010* ‘safe haven’ provision in section 255 reflect consumer understanding; and supported a move of country of origin food law to consumer law.

### **Recommendations**

The Ai Group Confectionery Sector recommends that:

- The *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012* be rejected;
- There continues to be a valid role for “Product of ...”, “Made in ...” and “Grown in ...” country of origin food labelling statements;
- Company ownership claims ie “100% Australian owned” should not be confused with country of origin food labelling;
- The current meaning of substantial transformation for complex and significant processes be retained;
- The qualified claims and other permitted terms are clarified and ensure that they are used in conjunction with an appropriate origin statement to improve compliance;
- Packaging be retained as a direct material cost incurred in production, in the determination of costs for “Made in ...”;
- Country of origin food labelling guidance materials is reviewed to clarify understanding for consumers and business and the role of education considered.

### **Conclusion**

The Ai Group Confectionery Sector continues to support the current framework for country of origin food labelling laws in the *Food Standards Code*, however recognises that there is value in consumer protection agencies reviewing existing publications, guidelines and educational materials in a consultative process and development of an education campaign to provide improved clarity for food businesses and consumer understanding.

The Ai Group does not support replacing the “Product of xxx” and “Made in xxx” statements with a “Made of xxx ingredients” statement as it fails to support local

manufacturing, in particular. We need a country or origin food labelling system that deals with where a product is made or produced.

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<sup>i</sup> Legislative and Governance Forum on Food Regulation (convening as the Australia and New Zealand Food Regulation Ministerial Council) - Response to the Recommendations of Labelling Logic : Review of Food Labelling Law and Policy (2011)