

**Australian Dairy Industry
Represented by
Australian Dairy Industry Council Inc. and
Dairy Australia**

**Response to
Australian Government, Department of Industry,
Innovation and Science, Country of Origin Labelling
- Consultation Regulation Impact Statement.**

Contacts

January 2016

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The Australian Dairy Industry¹

Australian dairy is a \$13.5 billion farm, manufacturing and export industry.

Australia's 6,100 dairy farmers produce around 9.7 billion litres of milk a year.

The Australian dairy industry directly employs 39,000 Australians on farms and in factories, while more than 100,000 Australians are indirectly employed in related service industries.

Realising growth potential and expanding the industry's economic, social and environment benefits depends on a positive national and international operating environment

- With a farm gate value alone of \$4.7 billion, the Australian dairy industry enriches regional Australian communities, where 1 in 8 Australians live.
- Australia is the fourth largest dairy exporter in the world, accounting for 6% of global trade.

This is a joint submission from the Australian Dairy Industry Council (ADIC) and Dairy Australia.

The ADIC is the national peak policy body for the Australian dairy industry and represents all sectors of the industry on issues of national and international importance. Its constituent organisations – the Australian Dairy Farmers Limited (ADF) and the Australian Dairy Products Federation (ADPF) – represent the interests of dairy farmers, and manufacturers, processors and traders across Australia, respectively.

Dairy Australia is the dairy industry-owned service company, limited by guarantee, whose members are farmers and industry bodies, including the ADF and the ADPF.

¹ <http://www.dairyaustralia.com.au/Home/Standard-Items/~media/Documents/Stats%20and%20markets/In%20Focus/Australian%20Dairy%20Industry%20In%20Focus%202013.pdf> viewed 26 March 2014

Key points

The Australian dairy industry supports minimum effective regulation that is evidence-based and proportionate to risk.

For dairy, it is critical that any country of origin labelling (CoOL) scheme:

- Gives consumers the information they need, without imposing excessive costs on industry.
- Allows Australian dairy products containing Australian milk to appropriately claim their Australian origin.
- Does not negatively impact our international trade.
- Can be enforced and is not overly burdensome on Australian dairy companies.
- Is supported by a well-conducted RIS process with a clear definition of the problem being addressed.

General comments:

- The proposed scheme is a significant increase in regulation and associated cost impost. The Consultation RIS costs the impact on business, but provides no real valuation of the benefit to consumers beyond a vague 'preference' for more information. Acknowledging the arguments for clearer labelling, the dairy industry supports the proposed model as a **voluntary** scheme revising and adding to the current safe harbour arrangements.
- We support removal of CoOL requirements from the Food Standards Code and their realisation as an Information Standard under the Australian Consumer Law. This more appropriately recognises CoOL as a consumer information issue that is unrelated to food safety or health.
- As a major export industry, if the scheme were to go ahead as mandatory, we would look for further assurance that this would not negatively impact our international trade.

Proposed scheme:

- We welcome the inclusion of an option for 'product of Australia' or 'made in Australia from Australian ingredients' where virtually all of the content is from Australia. However there is considerable confusion and ambiguity around the term 'significant ingredient' for claiming 'product of'. Increased guidance, developed with the industry's assistance, would address many of these issues and allow the origin of core Australian dairy products to be properly represented.
- We question the proposal for companies required by law to use the AMAG logo on domestic product, to then be charged for this use if they fail to relabel the same product for export. This will constitute a significant barrier to export, particularly for SMEs new to export markets. If the logo is required, its use should be free of charge regardless of where the final product ends up.
- If the proposed scheme were to go ahead as a mandatory requirement, the implementation period is critical to minimise the burden of this regulation. In setting an implementation period, consideration must be given to the whole of supply challenge of transitioning so many products concurrently and the constrained capacity of label makers to support this.
- The dairy industry needs a minimum transition period of two to five years for a change of this scale. This would ease implementation for manufacturers, allowing stocks of existing labels to be run out, as well as allowing time for government to implement the necessary consumer education campaigns. The industry notes the Health Star Rating System has been given a 5-year window before Ministers' consider a mandatory system.

Response to consultation questions

Consultation RIS questions

What information will satisfy consumers and keep costs down for business?

Food covered by the framework

1.
 - a. Is the list of non-priority food clear?
 - b. Are there any gaps?
 - c. Do you have any other concerns about priority and non-priority food?

The logic and conclusion of providing a list of non-priority food remains unclear. The argument appears to be that recognising the significant burden with little benefit from applying the proposed requirements, the government will only apply these to a subset of businesses. The 'non priority foods' identified essentially exempts a somewhat arbitrary collection of foods from this additional regulatory burden. As stated we believe the use of the detailed labelling with logo and percentages should be voluntary. If this is the case there is no need for an arbitrary list of 'non-priority foods'. We also note that this essentially applies a regulatory burden (and increased cost) to most core foods as per the Australian Dietary Guidelines, but exempts discretionary foods that may compete against these in the diet (e.g. 'sports drinks' and milk, 'snack foods' and yoghurt).

If this were to be mandatory, the approach of specifying a list of 'included unless specifically exempt' will necessarily lead to some unintended foods being caught up. For example we are unclear if infant formula, or formulated supplementary foods (which do not fit the minimally processed core foods that appear to be the 'priority' targets, but which are not named as 'non-priority') would be required to have the increased labelling?

It is worth noting that consumer demand and market forces should drive a voluntary approach to CoOL, with companies that do not participate accepting any potential market disadvantage.

Easy to read labels

2.
 - a. Is there a risk that changes to improve prominence of country of origin labels would make it harder to identify other labelling information, such as allergen warnings?
 - b. Are there any specific problems that might arise in relation to small packages?

The dairy industry welcomes the outcomes-based approach to legibility included in the proposal, where the requirements are for the words and designs to be legible and prominent so as to contrast distinctly with the background of the label. This is consistent with the approach in the Food Standards Code, however the inclusion of both a logo and the text statement inevitably increases the prominence of the CoOL information versus other information such as allergen statements and dietary guidelines.

The risk of undermining other important information would be addressed by making the scheme, and particularly the use of visual indicators, voluntary.

If the scheme is not voluntary then the location of the information should be voluntary to facilitate the lack of front of pack space on products sold in smaller package sizes.

Proportion of Australian ingredients

3. Can you provide an indication of the current number of hours spent and costs to your business from maintaining records to substantiate current origin claims being used today?

This information is not available.

4. To allow for variations, businesses could calculate the average proportion of Australian ingredients and provide this average on the label.

- a. How often should business need to calculate the average proportion of Australian ingredients to have the least impact on business costs, e.g. every 12 months, 24 months or 36 months?

36 months would be the preferred time interval. This would allow a more accurate calculation as the need to include some imported ingredients (e.g.: fruit in yoghurt) are determined by seasonal and climatic variations which will not necessarily be identical from year to year, and may, or may not include imported product.

- b. Please explain the cost impacts of these options for your business.

- c. Can you suggest another option?

- d. What would be the estimated costs of your alternative option?

5. The Consultation RIS outlines estimated costs to change labels, including:
- business processes - understanding new requirements, staff training, IT, inventory planning (\$14 000 per business)
 - initial label changes for packaged for (\$6245 per SKU)
 - initial label changes for fresh food (\$500–\$1300 per SKU)
 - regular label updates (\$2813 per SKU).

- a. Do you agree with each of these estimated costs?

The direct cost associated with changing a food product label is not easy to generalise. Costs vary significantly depending on many factors, including, but not limited to, the label material, size, graphics, order volume, etc. Setting a single estimate for an initial label change for all packaged foods will is not possible. In recent times, we have sought feedback from dairy industry manufacturers on the cost of label changes for several initiatives (e.g., Front of Pack labelling, (Health Star Ratings) and now also CoOL). The table below shows the range of responses we have collated from industry and indicates a significant range across the entire dairy products category, with equally significant variation within product types.

TYPE OF DAIRY PRODUCT	RANGE COST/SKU \$	RANGE # SKUs
UHT MILK	4,500 – 7,100	30 - 54
FRESH WHITE MILK	1,300 – 7,100	39 - 417
FLAVOURED MILK	1,300 – 7,100	28 - 250
POWDERED MILK	4,900 – 6, 300	10 - 22
YOGHURT	1, 010 – 13, 000	2 - 152
EVERY DAY CHEESES	1,000 – 13, 000	9 - 320
SPECIALTY CHEESES	1,000 – 13,000	5 - 250
DAIRY DESSERTS	1,200 – 13,100	3 - 56
ICECREAM	1,100 – 15, 755	2 - 47
CREAM	1,000 – 9,945	10 – 36
BUTTER/SPREADS	1,200 – 10,800	5 - 42

b. If no, please provide your estimates.

c. Are there any other areas of business costs that have not been covered here? Please explain.

Costs that don't appear to be considered in the CRIS include those associated with reformulation to simplify labelling requirements with regard to seasonality. Additionally, there may be costs associated with diluting brand image due to requirements for CoOL information which may not be in keeping with the overall desired look and feel of a brand. For example, an Australian premium specialty cheese may wish to emphasise their premium quality and awards won rather than Australian origin. With high competition for label space every mandatory requirement crowds out this flexibility and could cost in terms of brand appearance – for example, imported cheese may appear more 'premium' without a bar chart and kangaroo.

6. a. How do you think the proposed labelling changes would affect your record keeping time and costs?

b. Can you provide an estimate of these hours/costs?

7. Business size has not been accounted for in the estimates (noting that most food product businesses are micro or small). What impact will business size have on costs outlined here?

The size of the business may have an impact on the label cost in that, larger businesses may have greater purchasing power, however they are also likely to have a greater number of products impacted, making the task to have compliant products within the transition period more difficult.

One of the biggest impacts on the cost of adopting the scheme will be the implementation period. As outlined below in response to this, the implementation period will have a greater burden on SMEs, as these are more likely to buy labels in bulk in advance. It is not uncommon for SMEs to buy several years' supply of labels at a time to minimise unit cost.

In setting an implementation period, consideration must be given to the whole of supply challenge of transitioning so many products concurrently, and the constrained capacity of label makers to support this.

Specific country in which key ingredients were grown

8. Can you provide an estimate of the cost to your business to provide a label that details the origin of all ingredients?

It is not possible to provide a generalised response to this question, which is applicable to all dairy products.

9. How long do you believe the label will remain current? That is, how often would you estimate the need to update the label due to a change in the origin of ingredients?

It is not possible to provide a generalised response to this question, which is applicable to all dairy products.

10. Can you estimate the space that a label that details the origin of all ingredients would require on your product?

It is not possible to provide a generalised response to this question, which is applicable to all dairy products.

11. Do you believe providing such detailed origin information is a viable option the government should consider?

No. This would be extremely burdensome for little payoff and may create significant trade problems including the potential for a WTO challenge and trade sanctions.

12. As a consumer, do you want this information to be provided?

How can businesses be more confident in using the safe harbour defences?

13. How many staff do you devote to interpreting, applying and establishing compliance with the current ACL safe harbour defences?
14. a. What aspects of the current ACL safe harbour defences do you find the most difficult to interpret, apply and comply with?
b. Why?

Conversion of milk into the variety of dairy products enjoyed by consumers, requires a wide range of ingredients in addition to Australian milk. Many of these are included at very low levels to facilitate the functional transformation of the milk during processing, or to add fortification to the product to promote health outcomes. Many of these ingredients are not produced in Australia, either because the raw materials are not available, or they cannot be economically and sustainably manufactured here. For example, rennet, starter, salt, flavours, colours, cultures, enzymes, yeasts, vitamins and minerals integral to the production of cheese, yogurt, milks and infant formula.

We welcome the increased clarity and ability to continue claiming the current safe harbours. However point out that, as acknowledged in the paper (using the example of brine and pork products) there is considerable confusion and ambiguity around the term 'significant ingredient' for claiming 'product of'. There is currently considerable variation in how this is interpreted for Australian dairy products, and it is a key barrier to clearer claims (many companies err on the side of 'made in Australia' when they may be able to claim 'product of Australia'). Increased guidance, developed with the industry's assistance would address many of these issues and allow the origin of core Australian dairy products to be properly reflected. Our position on this issue is further outlined in our response to the Draft Information Standard below.

While we welcome the removal of the production cost test from the existing "substantial transformation" defence, we remain concerned that the new requirements for "substantial transformation" do not simplify or clarify the safe harbour.

The amended version set out in the exposure draft now requires that goods, defined as 'substantially transformed', are:

- subjected to processes that materially changed the identity or essential character of **all** imported ingredients/components (the "First Requirement"); and
- novel and fundamentally different from all their ingredients, or components, imported into the country (the "Second Requirement").

Rather than reducing the regulatory burden by making it easier for companies to assess compliance, we are concerned the First Requirement, in particular, will have the opposite effect.

We are concerned that situations may arise where, even if the Second Requirement is satisfied, there will be a large range of "new and fundamentally different" goods that still fail the First Requirement. This is because it focuses on an assessment of the identity, or nature of the ingredients/components, rather than on the extent and location of the transformative process and the nature of the new goods resulting from that process.

If the proposed amendments are introduced, companies will need to review all products currently using Made in Australia claims to assess whether they meet the new standard, adding additional cost and burden to business.

15. The Consultation RIS outlines estimates time for businesses to undertake the 50 per cent production cost test, including:
- time new businesses spend learning and understanding the test (approximately nine hours per year)
 - time new businesses spend applying the test for the first time (approximately 36 hours per year)

- time most businesses spend reviewing the test to ensure they remain compliant (approximately 30 minutes per year).

a. Do you agree with each of these estimated times?

b. If no, please provide your estimates.

16. Business size has not been accounted for in the estimates (noting that most food product businesses are micro or small). What impact will business size have on savings outlined here?

Larger companies have staff dedicated to such administration whereas SMEs will be relying on the business principle to conduct this analysis, thus resulting in a much higher cost to the business.

How should labelling of imported food be treated?

17. Do you believe the proposed labelling requirements will be met by the international manufacturer/supplier or will the imported products need to be stickered on arrival to Australia?

18. If products are stickered in Australia:

a. Will importers use a machine to apply the sticker or require people to apply the sticker?

b. If by hand, can importers estimate the number of hours that would be required to complete the process?

19. The Consultation RIs outlines estimates for label changes for imported food, including:

- initial label changes for manufactured food (\$2800-\$6200 per SKU)

- initial label changes for fresh food (\$500-\$1300 per SKU)

- administrative costs (\$1560 per SKU).

a. Do you agree with each of these estimated costs?

b. If no, please provide your estimates.

c. Are there any other areas of business costs that have not been covered here? Please explain.

d. Would you expect any ongoing costs for label changes or business processes for imported food?

20. Is the information on the number of countries ingredients have been sourced from readily available? If not, would there be any additional costs in seeking this information?

The dairy industry remains concerned that trade risks associated with proposed changes have not adequately been considered or managed.

Dairy is an export-oriented industry and access to international markets is critical. To maintain this access, we need to ensure Australia does not leave itself open to criticism, complaint, challenge and ultimately trade sanctions because of the application of domestic regulation to imports.

Australia's leadership in international forums also means maintaining a commitment to both the spirit and the letter of World Trade Organisation (WTO) agreements, and to international standards such as *Codex Alimentarius*.

The dairy industry has consistently argued for regulatory harmonisation at national and international levels, whenever practical. To facilitate exports, Australia regularly asks other countries to ensure regulations are evidence-based, and as consistent as possible with internationally accepted standards. Australia's credibility in negotiating market access relies on applying this same approach at home. It is critical that any new CoOL scheme is internationally acceptable. We acknowledge the intention stated by the Department of Industry that any scheme introduced in Australia will not result in WTO challenge or retaliatory action from trading partners, and reiterate the importance of this for the dairy industry, particularly given the recent successful WTO action against the US country of origin scheme.

We also note that while a new Australian CoOL scheme may abide by the letter of the WTO law, it must also be seen to be in the spirit of Australia's obligations. A scheme that is viewed as unreasonable and inconsistent with international standards may damage trading relationships and our credibility in negotiating favourable regulatory requirements for Australian exports, regardless of whether an official WTO challenge is issued.

According to previous Department of Industry submissions on CoOL 'Any attempt to change the current framework to restrict trade or 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, with possible penalties applying'.

The CRIS does not provide adequate assurance that these concerns have been addressed, or confirmation from DFAT and trade experts of the likely impact on trade.

We also note that the comparison of CoOL provisions in Australia and other countries provided in the CRIS, completely fails to look at the requirements among our major trading partners – which is surely of more relevance than a random selection of western economies? The requirements of China, Japan or key South East Asian and Middle East trading partners (e.g. Gulf Cooperation Council) are much more relevant for Australian food producers and should be considered in the decision-making process.

Already, New Zealand's Food Safety Minister Jo Goodhew has raised concerns about the effects of the proposed CoOL on Australian/ New Zealand trade relations.

What is the role for digital information?

21. a. If you are an Australian food manufacturer or producer, do you currently use digital solutions to provide additional information to your consumers?
b. If so, what do you do?
22. a. What are the costs associated with digital solutions in relation to the price of the food good?
b. Is this cost likely to be passed onto consumers?
c. Are the specific costs or solutions impacted by seasonality?

Education and awareness raising

23. Do you think a targeted education campaign on the current country of origin labelling framework would be a cost- effective solution to address consumer concerns?

Yes. Particularly coupled with additional clarification of 'voluntary safe harbours' to help businesses provide better and more comprehensive origin information to consumers. As already stated this includes clearer guidance on the definition of 'significant ingredient' which would give companies more confidence using this claim appropriately rather than erring on the side of caution with a 'made in Australia from local and imported ingredients' claim.

The proposed response

Proposed labels

24. a. Are there other ways to express the proportion of Australian ingredients that are simple, clear and not confusing for consumers, yet not overly burdensome for business?
b. What would the costs/savings of these options be?

As already stated the proposed labels should be additional voluntary safe harbours rather than a mandatory requirement.

25. a. If you are an Australian food manufacturer or producer, which of the two suggested variations for expressing the proportion of Australian ingredients on the bar chart do you find the most appropriate for your business:
 - quartile - at least 25 per cent
 - decile - at least 10 per cent?

Decile – at least 10%

b. Why?

A decile-based interval will provide more accurate information to consumers. However we suggest that normal numerical rounding principles be applied. Rounding down, for ingredient levels which are at the top end of an interval, may be deemed misleading, or confusing for consumers.

The larger 25% interval potentially may mean that a product which contains for example 95% Australian ingredients could only claim to be 75% Australian content. This is misleading to consumers who may then question what is the origin of the remaining 20%, of which a significant portion is also Australian origin.

Industry must also have the option to show precisely the percentage by allowing intra-bandwidth demarcation by using, for example, 'Made in Australia from Australian milk' without the 100% level specified and a depiction of the percentage in the bar chart, e.g. a nearly complete bar chart for 97%.

c. How does this flexibility affect your business costs?

26. We understand that the percentage of Australian sourced ingredients in a product may be highly seasonal, or subject to large annual variations in supply.

a. Will the proposed labelling requirements negatively impact on your business or industry?

b. If so, why?

The option to include a specific % on a website in association with a product batch code will be difficult and costly to administer. The inclusion of a QSR code would require a further label change and it is unclear if this would link to a centralised database system or if this would require individual companies to administer this process themselves.

27. Are there any unintended consequences for Australian food producers or manufacturers exporting products with Australian country of origin information?

As stated we remain concerned that trade risks associated with proposed changes have not adequately been considered or managed.

In addition, we are very concerned with what appears to be a plan to require the kangaroo logo for domestically sold products, but for AMAG to charge for this if the same product is exported. SMEs in particular do not necessarily relabel for export if importing country requirements are met. An additional charge that may not be justified by improved brand value is just a tax on exports.

28. Would there be benefits for consumers or food businesses if the bar chart could be used voluntarily on imported foods containing Australian ingredients?

Also see Explanatory and discussion paper for the Draft Information standard.

Safe harbour

29. Will the proposed changes to the safe harbour defences increase or decrease costs for your business?

30. a. If you are a food business, would the proposed changes make it easier for you to determine the correct country of origin claim to use?

No, as outlined below, the key ambiguity of dairy is in 'significant ingredient'. Further guidance on this would help.

b. Would guidance material help?

31. a. If you are a non-food business, are you supportive of the proposed simplification of the safe harbour defences?

b. Would you be more likely to use country of origin labels following the proposed changes?

Also see Explanatory and discussion paper for the Draft Safe harbour defence amendments.

Digital solutions

- 32. Should the government be helping to prepare consumers and business for more innovative technological solutions to country of origin labelling in the future?
- 33. How do you think businesses will implement these new measures?
- 34. What barriers are there to the use of digital solutions for country of origin labelling?

Education campaign

- 35. Do you believe that it would be important to support any change to the country of origin labelling framework with an education campaign? Please explain.

One of the major issues with current CoOL appears to be a lack of consumer understanding of the terms used and how they are defined. The Australian Government has done very little to ensure maximum understanding of the current scheme. To avoid the same problem occurring with any new scheme we would expect government to develop and implement an extensive and comprehensive education program around the implementation of a new scheme, or consumer education on the current CoOL system if the change does not proceed.

Implementation

Transition

- 36. How would a flat transition period affect implementation costs for your business?

The dairy industry has argued for a minimum transition period of two to five years for a change of this scale. This would ease implementation for manufacturers, allowing stocks of existing labels to be run out, as well as allowing time for government to implement the necessary consumer education campaigns. The importance of an extended implementation period cannot be overstated in light of new labelling requirements expected as part of the Container Deposit Schemes proposed by the Governments of NSW, ACT and QLD. To require companies to undertake multiple label changes and associated costs in a short period of time would be an abuse of government prerogative. We note the Health Star Rating System has been given a 5-year window before Ministers' consider a mandatory system.

Dairy Australia undertook a significant amount of work looking at costs associated with labelling changes as part of our work on the government's front of pack labelling scheme (the Health Star Rating System). This showed the following costs associated with changing labelling, which are mostly relevant to CoOL:

Type of cost	Range/sku \$
Update website/advertising	120 - 800
Extra data requirements	400 – 1,250

Technical administration	450 – 1,350
Staff training costs (note cost/SKU increases significantly the lower the # SKUs)	50 – 4,250
Set up software changes (note cost/SKU increases significantly the lower the # SKUs)	50 – 16,000
Ongoing monitoring & assurance costs	60 - 107
Label write off risk with 2-year implementation	10,100 – 15,700
Label write off risk with 3-year implementation	5,050 – 7,850

Notably management of associated implementation costs were found to be heavily influenced by the phase-in period. A two-year phase-in, on average doubles the potential cost of label write-off vs a three-year phase in period, which would minimise out-of-cycle label changes and product development processes.

37. How would a phased transition arrangement affect implementation costs for your business?

The very short timeframes proposed for a phased transition for CoOL are likely to increase costs excessively.

The implementation period suggested is between 6 and 24 months from when legislation is enacted depending on shelf life. The argument that if a product only has a two week shelf life it is very easy to change the label, completely fails to consider any design, traceability or sourcing changes, and the fact that companies buy labels in bulk and hold more than 6 months of labelling stock – regardless of whether the actual good is perishable.

38. Are there alternative transitional arrangements that will encourage speedy take up of the new labels without imposing undue costs on business?

39. a. Do you order your packaging or labels in advance?

b. If so, how would the transition periods impact on your labelling approach?

40. a. Are there complicating or unusual factors about your business that would make either transition approach difficult to comply with?

b. If so, please provide details.

41. If you are a small business, are there alternative transitional arrangements that would better suit you?

A phased transition would be particularly difficult for the large number of SMEs and boutique/niche product suppliers in the dairy industry. Boutique products are generally lower volume products. Smaller orders of packaging and labelling are significantly more expensive in the realm of 30 – 50% additional cost. It is not unusual for producers of these types of products to have a couple of years' worth of labels and packaging on hand.

42. If you are an importer, do you have any specific preferences or concerns about transition approaches?

43. a. As a business, would you choose to adopt the new labelling ahead of the timelines highlighted in the transition periods?

b. If so, please describe the regime you would employ including how you would minimise costs and ensure compliance.

Also see Explanatory and discussion paper for the Draft Information standard.

Compliance

44. Do you consider an audit power is necessary for a regulator to assess compliance with the information standard? What are the associated benefits and costs?
45. What would be the expected compliance costs for a business associated with the use of an audit power?
46. What alternative arrangements could be applied to support compliance with the information standard?

We remain unclear on compliance provisions. Implementation costs and time required will not be confined to the costs of new labels, and it is likely the most burden will come from new procedures and record keeping required to demonstrate compliance. An indication from regulators of how this would work in practice would help us provide more detail on costs.

We assume any audit power would only be in response to a complaint rather than an ongoing regular audit – which would be disproportionately burdensome. The dairy industry does not support any additional audit given the number and cost of those already in place for other purposes.

Other comments on CRIS

Costs and benefits

The proposed scheme is a significant increase in regulation and associated cost impost. Research put forward in support of CoOL only indicates a preference by consumers for more information, not the purpose or likely effect of this information.

Any consideration of changing CoOL requirements must properly compare both the benefits to be achieved and the costs as well as considering alternative options to achieve the envisaged benefits. Further comprehensive work needs to be undertaken and should at a minimum compare both costs and benefits of:

- the status quo
- working within the current regulatory approach by including the proposed approach as additional voluntary safe harbours
- the proposed new mandatory requirements

We note the EU's recent decision that the costs of mandatory CoOL for dairy products would far outweigh the benefits, and that while there is a clear consumer interest in origin labelling, surveys suggest that consumers' willingness to pay for CoOL is low and the need overstated.²

² http://ec.europa.eu/agriculture/external-studies/milk-meat-origin-labelling-2014_en.htm

Item 3 - Draft information standard - Explanatory and discussion paper questions

Please review questions with the 'Draft country of origin food labelling information standard' and associated 'Explanatory and discussion paper'. Both items are available on the [Department of Industry, Innovation and Science Consultation hub](#). Note that the Explanatory and discussion paper provides discussion points for selected items.

Part 1 – Preliminary information

Section 8

- a. Do you agree with the lists of changes and processes for food that should or should not be considered as substantial transformation set out in Attachment A to Consultation Package Item 6? Why?
- b. What other changes or processes do you think are or are not sufficiently transformative to warrant a change in the origin of a product that incorporates imported ingredients? Why?
- c. Should the lists of changes and processes that are or are not substantial transformation be included in regulations, or should they be in guidance material? Why?

Section 9

- a. We welcome feedback on whether there is sufficient clarity about the scope of non-priority foods. For example, is the difference between biscuits and snack foods and fruit and nut products, muesli bars and cakes and other bakery products sufficiently clear?

No. It is not sufficiently clear and the use of an 'included unless exempt' approach means this is likely to capture a range of highly processed foods not intended to be caught up, for example, infant formula. This approach of 'priority' and 'non-priority' is confusing and would be unnecessary if the scheme were voluntary.

Section 12

- a. As a business, is it easier to determine the percentage of Australian ingredients using ingoing weight rather than final weight? Why?
- b. Is there much difference between the ingoing weight of all ingredients in your food and the final weight? If so, what accounts for this difference?
- c. We have provisions dealing with how water should be treated when calculating the percentage of Australian ingredients (see Section 13 below). Do we need to make it clear that packaging is not an ingredient in food to make sure its weight is not used in the calculation?

Part 2 – Country of origin labelling requirements

Division 3

- d. While research showed that the origin information consumers most wanted to see in relation to food was the proportion of Australian ingredients, some consumers did want to see the origin of key ingredients. Would any businesses welcome the possible alternative approach that required the labelling of all of the different countries of origin of the food in the package instead of requiring a statement about the proportion of Australian ingredients? (but still with a bar chart reflecting the proportion of Australian ingredients).

No. We believe this would have disproportionate implementation costs, and potentially create trade issues.

Section 18

- a. Do we need to clarify the meaning of significant ingredients?

Yes. This is a significant issue for the dairy industry and requires more clarity. Currently there is confusion and a number of inconsistent claims on dairy products based on the interpretation of 'significant ingredients' – and hence claiming 'product of Australia'. For the most part these result from different levels of caution in this interpretation to ensure that they are not considered misleading, potentially resulting in lower levels of claims that are otherwise justified.

As noted, we do not consider that under the current regime consumers have any difficulty determining which dairy products are Australian. To date, those manufacturers that do err on the side of caution and make a 'Made in Australia' claim rather than a 'product of Australia' claim, have not had a substantial burden, as for the dairy products making this claim that are substantially Australian (e.g. cheese made from Australian milk). Most consumers still understand these are Australian products.

However if the proposed scheme goes ahead, the alternative to a 'product of Australia' claim will be a mandatory claim of 'made in Australia from at least 75% Australian ingredients', giving the impression that 25% of the ingredients are not Australian and that the product overall is 'less Australian' when the products we are talking about are for the most part made from 99.95+% Australian ingredients, and the minor ingredients included can only be sourced from overseas.

This increases the incentive to use 'product of Australia', and means any burden from not using this claim, or not feeling confident to use this claim due to ambiguous terminology, increases significantly.

The dairy industry has consistently argued that Australian dairy products made from Australian milk produced on Australian farms, and processed in Australian factories employing Australian workers, should be fully able to claim their Australian status.

The ability to claim 'product of Australia' assists this, but the benefits of this option can't be fully realised for the industry without further clarity on 'significant ingredients', which is not provided by the current guidance.

Ingredients that are required to make core dairy products and may be imported, but which the dairy industry believes should not be considered 'significant ingredients' include:

- Processing aids, including enzymes and rennet (noting these are already clearly excluded under the current definition)
- Additives
- Vitamins and minerals (even where these are included in a claim on a label to distinguish the product)
- Cultures
- Salt used in the production of cheese and butter

We also acknowledge that while the ACCC has been reluctant to set a percentage to define 'significant ingredients', the kinds of examples given are 5%, rather than the less than 0.5% of most of the components we are talking about. We believe there should be a minimal percentage set (e.g. less than 1%) where ingredients are definitely considered to be 'not significant'.

There are also further industry specific considerations for some of these products. For example cultures, while some are initially imported, are living organisms that when used in a product could fit the definition of 'grown' included in the information standard as they 'materially increase in size, or materially alter in substance in that country by natural development' as part of their use, but whether this applies in the case of cultures used in dairy products remains unclear to manufacturers.

The dairy industry believes that clarifying these issues would give companies greater confidence and consistency in claiming 'product of Australia' for clearly Australian core dairy foods. This would provide better information to consumers in line with their understanding of what an Australian product is, and would avoid misleading them in another way with the implication that these core Australian dairy products could contain 25% imported milk (as may be the false impression given by 'made in Australia from more than 75% Australian ingredients' on milk, cheese or plain yoghurt).

The industry would be happy to work with the ACCC on how to provide general or industry specific guidance on these issues, for example, industry guidelines signed off by the ACCC.

- b. Would consumers find the use of the filled bar chart misleading if all significant ingredients are Australian, rather than all ingredients?

No. We believe it would be more misleading to have a product with a bar chart and label that says '75% Australian ingredients' when the product is 99.5% Australian ingredients.

- c. Do we need to make sure significant ingredients make up more than 90 or 95 per cent of the food by weight?

For all of the core dairy examples considered this would be the case regardless.

Section 19

- a. We would like your feedback on whether the percentage of Australian ingredients should be based on multiples of 10% or 25%. Please let us know the reasons for your preference. (See also question 25 in the Consultation RIS.)
- b. As an alternative to the 'at least' statements, should there be an option to nominate the actual percentage of Australian ingredients with a tolerance of up to five per cent – and using the bar chart filled to the 10% or 25% multiple below the claimed percentage?
e.g. 'Made in Australia from 55% Australian ingredients' with the bar chart filled to 50% – where the actual percentage could be between 50% and 60%?

Yes.

- c. Or, as another alternative to the proposed provision, could businesses voluntarily name the single origin of ingredients that make up a significant proportion of the food (i.e. 70%, 75%, 80%, 90%,

etc.)?

e.g. 'Made in Australia from Canadian pork' if the pork is only from Canada and meets the minimum percentage in a product like ham?

or

'Made in Australia from Australian milk' if the milk is only from Australia and meets the minimum percentage in a product like yoghurt?

- Noting that the bar chart partially filled to the appropriate level would still be required.

Yes, this should be claimable. However wouldn't this already be acceptable given the provision that this information standard does not preclude any further information being provided?

Section 20

- a. We would like to know if you would prefer an average seasonal label with a link to more batch-specific information on-line, rather than a label based on the actual ingredients in the food (see section 19) – and if so, why.
- b. Also, we would like your feedback on a formula for calculating the average that would not be misleading to consumers. Over what period do you think the average should be calculated? – and for how long should it be valid?
e.g. averages could be calculated annually (i.e. every 12 months) or perhaps over a 24 or 36 month period – and the average could then be used for a similar period after that. (See also question 4 in the Consultation RIS.)
- c. Should averages be calculated over calendar or financial years (or perhaps other periods of 12, 24 or 36 consecutive months)?
- d. Also, what other ways could consumers access the additional information on-line besides a bar code? For example, through a website address.
- e. Should the option of nominating the actual percentage of ingredients with a tolerance of up to five per cent be permitted for seasonal statements too?
- f. Are there any other situations, besides seasonality, where the proportion of Australian ingredients normally varies throughout the year, and consumers would accept the necessity for a similar approach to origin labelling?

Subsection 21

- g. We would like your feedback on whether a seasonal average label as well as a straight 'at least' label is needed for packs containing food from different countries, similar to those featured in section 20.

See earlier answer, page 4, question 4

Part 4 - Legibility requirements, prohibitions and providing additional information

Section 26

- a. For packaged food, could the logo and bar chart appear separately from the text –
e.g. the logo and bar chart on the front and the text on the back?

As already stated the dairy industry believes the use of extra visual indicators should be voluntary, however if these are mandatory manufacturers should have maximum flexibility on where to place it.

- b. Comments on use of the logo and bar charts in off-label situations are also invited. For example, could the logo be used with a bar chart, but without the text, in off-label situations for multiple foods that were all grown, produced or made in Australia, and that have the same proportions of Australian ingredients?
- c. Are there any situations in which the logo could be used on food without the bar chart, without misleading consumers?
 - e.g. In stores displayed over deli produce or meat, including products that are wholly Australian and those made in Australia from a mix of local and imported ingredients such as sausages and ham that might have different levels of local content?
 - e.g. In catalogues for food made, produced or grown in Australia, with local content from anywhere between 0% and 100%?
- d. The current draft does not allow the bar chart to be used to indicate the proportion of Australian ingredients in imported food. It is thought that there are other ways this information could be presented, and the use of the bar chart in this way might confuse consumers or be difficult to verify. However, we are interested in hearing your views, including whether you believe there are overriding benefits to allowing the bar chart to be used voluntarily on imported foods containing Australian ingredients. (See also question 28 in the Consultation RIS.)

Part 5 - Transitional provisions

Section 29

- a. We understand that consumers would like to see clearer origin labels on food as soon as possible. However, we also understand that having adequate transition arrangements can help to keep implementation costs down for food producers, manufacturers, importers and retailers – minimising the impact on food prices. We therefore invite views on the impact of the proposed options.

As already stated the dairy industry has argued for a minimum transition period of two to five years for a change of this scale.

This would ease implementation for manufacturers, allowing for stocks of existing labels to be run out, time for the Government to implement the necessary consumer education campaigns, and the accommodation of Container Deposit Scheme labelling requirements. We note the Health Star Rating System has been given a 5-year window before Ministers' consider a mandatory system.

A two-year phase-in, on average doubles the potential cost of label write off vs a three-year phase in period, which would minimise out-of-cycle label changes and product development processes.

- b. We would also appreciate any practical suggestions on alternative transition arrangements that would ensure speedy adoption of the new labels, impose less cost on business and have the broad support of industry.

Dictionary

- a. Comments are invited on the definitions in the dictionary.

Item 4 - Proposed changes to the Australian Made, Australian Grown Certification Trade Mark Code of Practice questions

Please review questions with the item outlining the proposed changes on the [Department of Industry, Innovation and Science Consultation hub](#).

1. Are the proposed changes to the Code of Practice for the AMAG Certification Trade Mark likely to result in any significant public detriments?
2. Would they be likely to have any significant effect on competition or impact on consumers?

The proposed changes surrounding the use of the AMAG Certification Trade Mark are highly problematic. We are very concerned with what appears to be a plan for companies required by law to put the kangaroo logo on domestic products, to then be charged by AMAG for the same product exported overseas. This is a significant detriment and deterrent to exporters, particularly SMEs who do not necessarily relabel for export if importing country requirements are met. Any use consistent with these proposals, whether exported or domestic, should be free of charge.

Item 6 - Draft safe harbour defence amendments - Explanatory and discussion paper questions

Please review questions with the 'Draft country of origin safe harbour defence amendments' and associated 'Explanatory and discussion paper'. Both items are available on the [Department of Industry, Innovation and Science Consultation hub](#).

1. Do you agree with the list of changes and processes that should or should not be considered as substantial transformation? Why?
2. What other changes or processes do you think are or are not sufficiently transformative to warrant a change in the origin of a product that incorporates imported ingredients or components? Why?
3. Should the lists of changes and processes that are or are not substantial transformation be included in regulations, or should they be in guidance material? Why?

As already outlined the key required clarity of dairy is around 'significant ingredient' and we would be happy to work with government on appropriate guidance material.

Attachments

Availability and proportion of non-dairy ingredients used in Australian dairy products

Minor ingredients used in core dairy products	
Vitamins and minerals	<p>Very minor amounts used as percentage of final product.</p> <p>Mainly sourced overseas with no local alternatives.</p>
Additives	<p>Very minor amounts used as percentage of final product.</p> <p>Mainly sourced overseas with no local alternatives.</p>
Flavours	<p>Very minor amounts used as percentage of final product.</p> <p>Mainly sourced overseas with no local alternatives.</p>
Processing aids	<p>Generally exempt from definition of 'ingredient'.</p> <p>Mainly sourced overseas with no local alternatives.</p>
Starter cultures	<p>Minor amounts used as percentage of final product (e.g. 0.005%)</p> <p>Some Australian sources available for some cultures (DIAL – 60% of cheese market, DSM) but others are specifically sourced overseas – it depends on the specific cheese or yoghurt strain.</p> <p>As a living organism the cultures grow, and die, in the product. The culture left at the end is different to that added as it has grown as part of the process.</p> <p>Can be directly added to the vat or bulk starter cultures grown before adding as an ingredient.</p>
Salt	<p>Around 1.6% content of cheddar and butter. Salt of the purity and consistency for commercial butter and cheese-making is not manufactured in Australia. This is generally Pure Dried Vacuum salt and there is no vacuum drying plant in Australia and our market is not large enough to support one. Australian processes use solar drying which leaves impurities unsuitable for commercial cheese making.</p> <p>However Australian salt company Cheetham Salt has a partnership with Dominion Salt in New Zealand which has a vacuum drying plant, mainly used to produce pharmaceutical grade salt. There is no local New Zealand salt source so the majority of cheese making salt used in the Australian cheese industry is Australian salt, sent to New Zealand for vacuum drying, and returned to Australia for packaging. The Product Information Form for this salt states New Zealand as the country of origin, but also states 'This product is produced using natural solar</p>

	<p>evaporated sea salt from Australia as a base material, purified and recrystallised under controlled conditions in New Zealand.'</p> <p>Some manufacturers also source salt from other countries (e.g. China).</p>
Sugars	Amount used variable. Sourced from Australia and overseas
Fruit and other flavourings	Amount used variable. Sourced from Australia and overseas with seasonal variations
Vegetable oils	Amount used variable. Sourced from Australia and overseas
Herbs, spices	Amount used variable. Sourced from Australia and overseas, some only available from overseas

Available CoOL claims for core dairy products based on non-dairy ingredients

Dairy products	Non-dairy (potentially imported) ingredients	Possible CoOL claim if 'product of Australia' not allowed	CoOL claim if current 'product of Australia' retained	CoOL claim with 0.5% tolerance and/or clarified list of not 'significant ingredients'
Whole milk	None	100%	100%	100%
Modified milks and skim milk	Vitamins and minerals	>75%	AMBIGUOUS	'Product of Australia'
Flavoured milks	Flavours and additives	>75%	AMBIGUOUS	'Product of Australia'
Buttermilk	None	100%	100%	100%
Condensed and evaporated milk	Sugars, salt, additives	>75%	AMBIGUOUS	>75% or 'Product of Australia' depending on source of sugars
Cheese	Salt, cultures, additives, rennet	>75%	AMBIGUOUS	'Product of Australia'
Flavoured cheese	Fruit, herbs, spices, additives	>75%	AMBIGUOUS	>75% or 'Product of Australia' depending on proportion and source of flavouring
Plain yoghurt	Cultures, potentially additives	>75%	AMBIGUOUS	'Product of Australia'
Flavoured yoghurt	As per plain yoghurt with sugar, additional flavours and additives, fruit, cereals, honey, spices etc	>50%, or >75% depending on proportion and source of flavouring	AMBIGUOUS	>50%, >75% or Product of Australia depending on proportion and source of flavouring
Salted butter	Salt	>75%	AMBIGUOUS	'Product of Australia'
Unsalted butter	None	100%	100%	100%
Cultured butter	Cultures	>75%	AMBIGUOUS	'Product of Australia'

Australian Dairy Industry response to Australian Government, Department of Industry, Innovation and Science, Country of Origin Labelling Consultation Regulation Impact Statement.

Dairy spreads	Additives, salt, other oils	>50%, or >75% depending on proportion and source of oils	AMBIGUOUS	>50%, >75% or 'Product of Australia' depending on proportion and source of oils
Cream	None	100%	100%	100%
Thickened cream	Additives	>75%	'Product of Australia'	'Product of Australia'
Ice cream	Sugar, additives, flavouring	>50%, or >75% depending on proportion and source of flavouring	>50%, >75% or 'Product of Australia' depending on proportion and source of flavouring and sugar	>50%, >75% or 'Product of Australia' depending on proportion and source of flavouring and sugar
Custard	Sugar, flavours, additives (egg)	>50%, or >75% depending on product	>50%, >75% or 'Product of Australia' depending on proportion and source of sugar	>50%, >75% or 'Product of Australia' depending on proportion and source of sugar
Dairy desserts	Many	>50%, or >75% depending on product	>50%, >75% or 'Product of Australia' depending on product	>50%, >75% or 'Product of Australia' depending on product
Powders	May contain some additives	100%, or >75%	100%, or 'Product of Australia'	100%, or 'Product of Australia'
Infant formula	Many	Likely exempted	Likely exempted	Likely exempted
Supplements	Many	Likely exempted	Likely exempted	Likely exempted