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**Department of Industry,
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Country of Origin Labelling Consultation package - Item 3

Draft Information Standard Explanatory and discussion paper

Country of Origin Labelling Taskforce

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<https://consult.industry.gov.au/cool-taskforce/cool>

Country of Origin Food Labelling Consultation Package Item 3

Draft Information Standard - Explanatory and Discussion Paper

Disclaimer: This paper does not cover all aspects of the draft Information Standard, and does not replace, override or determine the legal interpretation of the Information Standard. It seeks to help readers to understand some of the provisions, not all the details.

This document should be read in conjunction with other elements of the Country of Origin Labelling Reform Consultation Package, particularly the Consultation Draft Information Standard (Consultation Package Item 2). Other elements of the package are the Consultation Regulation Impact Statement (RIS) (Consultation Package Item 1), Proposed changes to the Australian Made Australian Grown Certification Trade Mark (Consultation Package Item 4), the Exposure Draft Bill to amend the Australian Consumer Law country of origin safe harbour defences (Consultation Package Item 5), and its associated explanatory and discussion paper, which includes lists of processes or changes that are or are not considered to be substantial transformation (see Consultation Package Item 6).

1. Background

Operation of existing law

The Australia New Zealand Food Standards Code (the Food Standards Code) requires most food for retail sale in Australia to be labelled with:

- the country where the food was made, produced or grown; OR
- the country where the food was manufactured or packaged, and whether the food is made up of imported ingredients or a combination of local and imported ingredients.

The Commerce (Imports) Regulations 1940 also requires certain imported goods, including all food, to be labelled with the country in which it is made or produced.

The Australian Consumer Law (ACL – Schedule 2 to the *Competition and Consumer Act 2010*) prohibits false or misleading representations about the origin of goods, including food. To provide certainty for businesses, Part 5-3 of the ACL provides 'safe harbour' defences for country of origin claims where goods meet certain criteria. If goods satisfy the relevant criteria, the business is deemed to not have engaged in misleading or deceptive conduct or made a false or misleading representation under the ACL.

Goods that would meet the safe harbour defences if claimed to be Australian would also meet the rules for using the Australian Made Australian Grown (AMAG) logo. Where businesses meet these rules, they may apply to Australian Made Campaign Limited (AMCL) to use the logo. AMCL is a not-for-profit private company that owns and manages the AMAG logo under a deed with the Australian Government.

Need for change

The objective of country of origin labelling (CoOL) is to provide consumers with origin information so they can make informed purchasing decisions in line with their personal preferences. Inquiries and research conducted in recent years show that the current framework is largely ineffective in meeting its objectives, particularly for food. Some origin labels and rules are still unclear, confusing or unhelpful to consumers and business, despite the release of improved ACL guidance material on CoOL in October 2012 and April 2014.

Proposed reforms

The Commonwealth Government has proposed a package of reforms to address the flaws in the current CoOL framework. A Consultation Regulation Impact Statement (RIS) has been drafted to inform the further development of these proposed reforms (Consultation Package Item 1)

At the heart of the reforms is a new Information Standard to be made under section 134 of the ACL, which will replace the current CoOL requirements in the Food Standards Code. The new Information Standard will require businesses to provide clearer information about the origin of food that consumers can readily understand and trust when making their purchasing decisions. Details on the draft Information Standard are set out in **Section 2** below.

Related proposals

The proposed Information Standard forms part of a package of proposed country of origin labelling reforms announced by the Commonwealth Government on 21 July 2015, including:

- Removal of CoOL provisions in the Food Standards Code;
- Changes to the ACL to simplify and clarify the country of origin safe harbour defences;
- Changes to the Commerce (Imports) Regulations 1940 country of origin marking provisions to align them with the new Information Standard and the revised country of origin safe harbour defences (progress on the proposed changes to these regulations can be found on the Department of Immigration and Border Protection website at <http://www.border.gov.au/about/reports-publications/discussion-papers-submissions/review-ci-regulations>); and
- Changes to the AMAG logo arrangements (including alignment of the Code of Practice for the revised Certification Trade Mark to remove food for sale in Australia and to reflect the revised ACL safe harbour defences).

2. Who is affected?

The proposed Information Standard is aimed at providing **Australian consumers** with the country of origin information they most want to know about the food they buy, in a way that is easy for them to understand – while trying to minimise increased costs for business and continuing to comply with international trade obligations.

The Information Standard imposes requirements for the labelling of all food destined for retail sale in Australia, and obligations on **food producers, manufacturers, importers, wholesalers and retailers**. These obligations include placing appropriate country of origin labels on food packages and displays, as well as providing enough information to others so that they can apply the appropriate labels.

Part 2, Division 3 is of particular importance to **those supplying food that has been grown, produced, made or packaged in Australia**.

Part 2, subsections 15(3) and (4) are of particular importance to **those supplying imported packaged food**. These subsections will be supported by proposed changes to the Commerce (Imports) Regulations 1940, aimed at aligning provisions relating to the labelling of food with other elements of the proposed reforms, including this Information Standard (progress on the proposed changes to these regulations can be found on the Department of Immigration and Border Protection website at <http://www.border.gov.au/about/reports-publications/discussion-papers-submissions/review-ci-regulations>)

For **those supplying unpackaged food**, or fruit and vegetables in transparent packages, whether imported or Australian, Sections 16, 17 and 24 are most relevant.

Those **currently licensed to use the kangaroo logo** featured in the Information Standard may wish to take a specific look at Sections 26 and 29, which deal specifically with the use of the logo after the Information Standard commences.

3. Discussion points

Throughout this document, there are questions on specific provisions of the draft Information Standard. Please do not restrict your comments to these issues if you have other concerns.

Also, additional questions on the proposed reforms can be found in the Consultation RIS (Consultation Package Item 1), the Proposed Changes to the Australian Made Australian Grown Certification Trade Mark (Consultation Package Item 4), and the explanatory and discussion paper accompanying the draft Bill for the amendments to the safe harbour defences in the Australian Consumer Law (Consultation Package Item 6).

We would appreciate it if you could respond to as many questions as you can so that your views can be taken into account in finalising the package of reforms.

4. Next steps

Once this round of consultations is completed, the proposed reforms will be finalised and put to relevant Commonwealth, state and territory Ministerial forums for agreement. Should the final proposal be agreed, legislation will be introduced to give effect to the reforms. At this stage, the legislation is expected to commence in mid-2016.

5. Draft Information Standard Provisions

Part 1 – Preliminary information

Section 6 provides an outline of the information standard – this document provides additional explanation and guidance on specific sections.

Section 8 provides definitions for ‘grown’, ‘produced’ and ‘made’, which are based on the Australian Consumer Law country of origin safe harbour defences. Changes will be made to the safe harbour defences as part of the reforms to simplify and clarify them – see Consultation Package Items 5 and 6. These changes will mainly affect origin representations like ‘made in’ – by clarifying the meaning of substantial transformation (including through lists of what is and what is not substantial transformation), as well as removing the 50 per cent production cost test.

Discussion (Questions from Consultation Package Item 6)

- 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 lists the non-priority foods that have less prescriptive origin labelling requirements (these foods were those for which consumers least valued country of origin labelling according to the latest research – see www.industry.gov.au/cool).

Discussion

- 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?

Section 11 provides that, where the percentage of Australian ingredients is required in food that is not 100% Australian, an exact figure is not required – it can be an “at least” statement, rounded down to a multiple of 10% or 25%. See section 19 for how these statements and bar charts would appear on labels.

Section 12 explains that the percentage of ingredients refers to the ingoing weight, as in the recipe, not the weight after the food has been cooked or processed. This aligns with how weight is treated in many areas of the Food Standards Code.

Discussion

- 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?

Section 13 provides rules for treating water, covering rehydration, water used as liquid packing medium and water added as an ingredient. The provisions for rehydration reflect those in the current Australian Consumer Law country of origin safe harbour defences. Provisions on liquid packing media are based on provisions in international food standards, such as those of the Codex Alimentarius Commission.

Discussion

- a. Are there any other issues that need to be considered when it comes to the treatment of water as an ingredient in food?

Part 2 – Country of Origin Labelling Requirements

Division 1 - Scope

Division 1 sets out the scope of foods captured by the Standard – which reflects the scope of the previous country of origin labelling requirements in the Food Standards Code.

Subsection 14(1) provides that food suitable for retail sale in Australia are covered by this standard, as are sales to caterers (as per the previous requirements in the Food Standards Code). The standard does not apply to food that is solely for export.

Subsection 14(2) provides that this Standard does not cover food sold in restaurants and the like for immediate consumption, or certain food made and/or packaged on the premises – like bread from bakeries or meat from supermarket deli service areas – (as per the previous requirements in the Food Standards Code).

Subsection 14(3) provides rules for small packages as defined in section 1 of the Dictionary – the logo and bar chart are not required for packages with an area of less than 100cm². This provision aligns with the small package provisions of the Food Standards Code, which deals with situations where it would not be practical to impose labelling requirements.

Division 2 - General rules

Division 2 sets out labelling requirements for three categories of food – unpackaged, fruit and vegetables in transparent packages, other packaged food (aligned with requirements in the Food Standards Code).

Section 15 provides rules for packaged foods, other than fresh fruit and vegetables in transparent packaging (that is, most packaged food – the basic requirements).

Subsection 15(1) sets out the foods captured – effectively food for retail sale that has to be labelled under the Food Standards Code.

Subsection 15(2) provides that Australian food and food packed in Australia has to be labelled in accordance with the additional requirements set out in Division 3. These additional requirements do not apply under the current requirements in the Food Standards Code, and have been introduced to provide Australian consumers with the origin information that is most important to them when it comes to food, according to the latest research. The additional requirements will not apply to imported food that has not been processed (or packed) in Australia.

Subsection 15(3) provides rules for imported packaged food. While imported food must still include the country where the food was grown, produced or made, this provision does not require specific statements or visual indicators to appear on the label. This provision should not require any changes to the country of origin claims for food where the package contains at least some food grown, produced or made in the country claimed. For example, imported food that is simply labelled as made in a particular country, or packed in a particular country from local and imported food or ingredients, can continue to carry those labels.

However, this provision may require changes to origin claims for food packed in a country where all of the food in the package was imported into that country from one or more other countries. Currently the label just needs to indicate where the food was packed and that it contains imported ingredients.

Under the draft Information Standard, if all of the food in the package came from one country, and was packed in another, the label would need to say where the food came from, not just where it was packed. This is in keeping with the internationally accepted principle that origin does not change when goods from one country undergo minor processes (like packing) in another country.

In the interests of practicality and to keep costs down for businesses, if a package contains food from different countries, this provision would still allow the label to say where the food was packed, so long as it also showed that the food was of multiple origins.

Subsection 15(4) requires origin claims for imported food (other than non-priority food) to be in a clearly defined box. This change to the previous requirements in the Food Standards Code will help consumers find country of origin statements more easily on food for which they most value origin information. Questions on the possible costs associated with the box requirement are contained in the Consultation RIS (Consultation package Item 1).

Section 16 provides rules for fresh fruit and vegetables in transparent packaging, which allow the required labels (including the additional requirements for Australian food and food processed or packed in Australia) to be on the packages or on displays – effectively allowing them to be treated as packaged or unpackaged food, as per the current requirements in the Food Standards Code.

Section 17 provides rules for unpackaged meat, fish, fruit and vegetables – which allows the labels to be on pack or on the display (as per the current requirements in the Food Standards Code). Labels on displays will have to include the additional requirements for Australian food. Where a display includes food from multiple origins, this will need to be indicated on the display, as is currently the case. If the display includes Australian food and like foods from other countries (e.g. in a bin of oranges from different countries), the food does not meet the requirements to claim that it is grown, produced or made in Australia, and so the logo and bar chart is not to appear on the label for the display.

Division 3 - Australia specific rules

Division 3 sets out additional requirements for food grown, produced, made or packaged in Australia. These requirements would be voluntary for non-priority foods (i.e. foods for which consumers least value origin information).

Generally, if food is grown, produced or made in Australia, it is required to have the kangaroo in a triangle logo on the pack or, if unpacked, on the display. Labels must also show a bar chart with the percentage of Australian ingredients by weight. The latest research shows that consumers find these labels most effectively convey the origin information they most value when it comes to food. Generally, if food is packaged in Australia, and at least some of the food in the package was grown, produced or made elsewhere, it is required to have the bar chart and the percentage of Australian ingredients – but it must not bear the kangaroo in a triangle logo.

Discussion

- a. 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).

Section 18 provides four choices of label, in either vertical or horizontal format, for food grown, produced or made in Australia in which all of the significant ingredients were grown or produced in Australia. All of the labels require the logo and a filled bar chart, together with specific origin statements.

Discussion

- a. Do we need to clarify the meaning of significant ingredients?
- b. Would consumers find the use of the filled bar chart misleading if all significant ingredients are Australian, rather than all ingredients?
- c. Do we need to make sure significant ingredients make up more than 90 or 95 per cent of the food by weight?

Section 19 provides labels, in either vertical or horizontal format, for food made in Australia (not just packaged or subjected to other minor processes here) where some or all of the significant ingredients were not grown or produced in Australia. These labels require statements about the percentage of Australian ingredients in multiples of 10% or 25 %, as well as the logo and a bar chart partially filled to reflect the stated percentage. For food that is made in Australia but that has no Australian ingredients, there is an alternative to a '0% Australian ingredients' label, which requires a statement that the food is made in Australia from imported ingredients, but still requires the logo and an empty bar chart.

Discussion

- 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 Q 25 in Attachment A to the Consultation RIS – Consultation Package Item 1.]
- 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%?
- 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, in both cases the bar chart partially filled to the appropriate level would still be required.

Section 20 accommodates seasonal variabilities in the percentage of ingredients that are Australian. Instead of basing the ‘at least’ percentage on the proportion of Australian ingredients actually in the package (as required by section 18), these labels could carry an ‘at least’ percentage based on the average proportion of Australian ingredients over a specified period. If a producer wishes to use an average percentage, additional information will need to be available on-line about the particular batch.

Discussion

- 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 18) – 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 Q 4 in Attachment A to the Consultation RIS – Consultation Package Item 1.]
- c. Also, what other ways could consumers access the additional information on-line besides a bar code? For example, through a website address.
- d. 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?
- e. 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?

Section 21 deals with food packed in Australia where at least some of the food in the package was not grown, produced or made here. In these circumstances, the current Food Standards Codes allows labels like ‘Packed in Australia from local and imported ingredients’ or ‘Packed in Australia from imported ingredients’. As packing and other minor processes do not confer origin, the provisions in this section aim to provide more useful origin information for consumers. They also ensure that, where food

packed in Australia includes imported food that has only undergone minor processes here, it will not be entitled to use the kangaroo logo, which indicates Australian origin – even where some of the food in the package is Australian (e.g. packs of mixed nuts that include Australian and imported nuts).

Subsection 21(2) deals with food packed in Australia where all of the food in the package has a single overseas country of origin (i.e. was grown, produced or made in that country). In these cases, the country of origin must be stated on the label. If the producer wishes to state the product is packed in Australia, the label must also include an empty bar chart.

Subsection 21(3) deals with food packed in Australia where the food in the package comes from two or more different countries, none of which is Australia. In these cases, the food will be labelled as packed in Australia from 0% Australian ingredients, or from imported ingredients, and must also include an empty bar chart.

Subsections 21(4) and (5) deal with food packed in Australia where the food in the package comes from two or more different countries, one of which is Australia. In these cases, the food will be labelled as packed in Australia, state the percentage of Australian ingredients in multiples of 10% or 25%, and include a bar chart partially filled to reflect that percentage.

Discussion

- a. 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.

Section 22 provides that non-priority food that was grown, produced or made in Australia, need only have a label with a statement to this effect, with no requirement to indicate the proportion of Australian ingredients or to include the logo or bar chart – and no need for the statement to be in a box. This is the same treatment as for imported non-priority food – see subsection 15(3). However, sellers of non-priority food grown, produced or made in Australia may choose to adopt the full labelling requirements for priority food in sections 18, 19 and 20, if they wish.

Section 23 applies where non-priority food is packed in Australia, but not all of the food in a package was grown, produced or made here. If the food in the package comes from a particular country then that country must be stated and if the food in the package comes from different countries the label should state packaged in Australia from multiple origins. Again, this is the same treatment as for imported non-priority food – see subsection 15(3), and sellers can choose to adopt the full labelling requirements for priority food in section 21, if they wish.

Part 3 – Other sales where country of origin information must be provided

Section 24 enables an Australian food processor or retailer that purchases wholesale foods or ingredients to obtain country of origin information from the seller. This reflects current requirements in the Food Standards Code.

Part 4 – Legibility requirements, prohibitions and providing additional information

Section 25 deals with legibility and size of information on display cabinets, based on the existing Food Standards Code requirements. It also notes that a style guide will be available on the web. The labels may be monochrome, or reverse colours or have a transparent background where there is sufficient contrast and legibility. Otherwise, they should use the standard green and gold colours, where practicable. A style guide accessible on the Department of Industry, Innovation and Science's country of origin labelling webpage will be developed.

Section 26 protects the use of the logo and bar chart, including in off-label uses such as displays, brochures and websites.

Discussion

- 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?
- b. Comments on use of the logo and bar charts in off-label situations are also invited.
e.g. Could the logo be used with a bar chart, but without the text, in store displays or catalogues 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 Q 28 in Attachment A to the Consultation RIS – Consultation Package Item 1]

Section 27 Nothing in the information standard is intended to prevent additional information on country or region of origin being provided.

Section 28 provides record keeping requirements.

Part 5 – Transitional provisions

Section 29 provides for transitional arrangements. These arrangements would allow food to continue to be labelled under the previous Food Standards Code rules for a particular period of time – giving food businesses sufficient time to design, commission and apply the new labels. The final transitional arrangements have yet to be decided. Two options are put forward for consideration – a straight 24 month transition or a staggered transition.

In the first option, businesses would be given 24 months to change over to the new labels for both packaged and unpackaged food. This would give most businesses the chance to move to the new labels as part of their normal labelling cycles – thereby reducing the burden of the reforms.

In the second option, packaged food would have 6, 12 or 24 months to transition to the new labels, depending on the shelf life of the product. The transition period for labels on displays of unpackaged food would be 3 months.

In either case, there would be no restrictions on food labelled and already in stock or trade before the standard commences. If labelled correctly, the product would remain available for sale in Australia during and after transition.

Similarly, products labelled correctly under old rules during the relevant transition period would not need to be re-labelled when that period ends. However, any food labelled after the relevant transition period would need to meet the new rules.

Discussion

- 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.
- 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 broad industry support. [See also Q 38 in Attachment A to the Consultation RIS – Consultation Package Item 1]

Subsection 29(6) [or 29(4)] provides that, during the relevant transition periods, food that has been labelled consistently with the Australian Made Australian Grown Logo rules may continue to carry the logo under those rules. After the relevant transition periods, the logo must be used with the bar chart and statements required by this standard on food for sale in Australia, and will be provided free of charge by the Australian Government for this purpose. It is proposed that Australian Made Campaign Limited would continue to manage the use of the logo for non-food products in Australia and all products in export markets. The rules for using the logo for products not covered by the Information Standard will be changed accordingly (see Consultation Package Item 4).

Dictionary

The Dictionary is split into three sections, one with general definitions, another with definitions associated with medical institutions (to help define the scope of food sales not covered by the standard) and definitions relating to food terms. The definitions are largely drawn from the Food Standards Code, international food standards developed by the Codex Alimentarius Commission, and the Australian Consumer Law country of origin safe harbour defences.

Discussion

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