

Ai GROUP SUBMISSION

Response to the
Department of Industry,
Innovation and Science Country
of Origin Labelling Consultation

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About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which, along with its affiliates, represents the interests of more than 60,000 businesses in an expanding range of sectors: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

The Ai Group represents the Australian and New Zealand confectionery industry through its Confectionery Sector, comprising manufacturers of chocolate, sugar and gum confectionery; suppliers of ingredients, machinery, packaging materials and services to the industry, and wholesaler and distributor firms. The Ai Group has approximately 130 confectionery sector members. 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 in South Australia, Queensland and New Zealand where SME businesses are based.

Australian Industry Group contact for this submission

Jennifer Thompson – Technical & Regulatory Manager, Australian Industry Group (Ai Group)
Confectionery Sector

Telephone: 03 9867 0181

Email: jennifer.thompson@aigroup.com.au

Submission: Country of Origin Labelling

The Australian Industry Group (Ai Group) Confectionery Sector makes - this submission in response to the Department of Industry, Innovation and Science Country of Origin Labelling Consultation.

General comments

The Ai Group Confectionery Sector recognises the complexity of country of origin food labelling, the extensive debate that has and is continuing to take place in this area and consumer interest in this matter.

We recognise the interest in supporting Australian farmers, the local economy and jobs and as part of the manufactured food sector, maintain our support and recognition towards the importance of 'made in' claims, in particular, as a reflection of the manufacturing that occurs locally.

We also understand that consumer interest in the country of origin of their foods and the processing of those foods varies between being very important for fresh produce with the level of importance diminishing as food becomes more processed.

With this consumer sentiment in mind, the Ai Group Confectionery Sector acknowledges the country of origin labelling response for confectionery warrants a lower priority.

We therefore, in principle, support the proposed approach that seeks reduced country of origin labelling requirements for confectionery, as a non-priority food, ie those being foods for which Australian consumers are least concerned about origin information. It is also appropriate that confectionery, as an occasional food, that contributes about 2-3% of total energy consumed by Australians, is a non priority food.

We recognise this approach aims to help balance industry cost for additional information against the the information benefits to consumers.

Further, we are interested in achieveing reforms that are workable, sustainable and meet the needs of consumers, while reducing unnecessary burden on the local food industry.

Specific comments

The Ai Group Confectionery Sector provides this response specifically with respect to confectionery, on behalf of the Australasian confectionery industry.

Meaning of non priority foods and confectionery definition

Whilst we welcome the proposed reduced requirements for 'confectionery' as a non-priority food, we appreciate elements in the reform package aim to provide clarification, including terms such as substantial transformation. We also support removal of the 'made in' 50% cost of production test and closing the loop on 'packaged in' claims. These will assist the confectionery industry to make relevant change to assist consumer understanding.

In relation to the definition of 'confectionery' in the dictionary section, 'cocoa and chocolate products' we would suggest also capturing baking chocolate, powdered cocoa and drinking chocolate powder, in order to provide clarity and for consistency.

These products are derived from cocoa beans, sourced from the same imported origins and processed under similar conditions as 'cocoa and chocolate products'. They should also be considered non-priority foods.

Consumers do not consider cocoa a product that can be grown and produced locally on an industrial scale. Consumers don't expect these products to be purchased from Australian growers. Indeed, baking chocolate and powders and drinking chocolate powders make up a small volume of the cocoa and chocolate category.

Non-priority food Clause 22 and 23

Although Part 1, Clause 6 indicates the country of origin statement for non-priority foods need not be in a box, we recommend that it would be useful to clarify this in connection with Division 3, Clause 22 and 23 of the Information Standard (ie that the country of origin statement need not be boxed).

Non-priority food grown, produced or made in Australia

Through the consultation we have understood that existing labelling may continue ie including the qualified claims such as 'Made in Australia from local and imported ingredients', or derivations, providing they comply with the revised requirements under the Competition and Consumer Act for 'made in' and consumer law.

The confectionery industry wishes to retain flexibility to continue to use current labelling.

'Made in Australia' importantly tells the consumer where the product is made/manufactured and the extension 'from local and imported ingredients' provides consumers with additional information, where some raw ingredients are not grown in or from Australia. Further, it signals the proportion of local to imported ingredients, ie if local is first, the content will be the larger amount, ie > 50% by weight.

While the requirement to highlight where a product does contain imported ingredients will no longer be required once Standard 1.2.11 of the Australia New Zealand Food Standards Code (ANZFS) is repealed, in the interests of balancing consumer demand for information, and to help manage the cost implications for business, our advice will be that, as a non-priority food, confectionery products may retain the existing labelling in connection with made in claims (Clause 22).

Such claims are not disallowed (and in fact through Section 27 of the Information Standard additional information is permitted), ie nothing in the Information Standard is intended to

prevent additional information from being provided on country or region of origin assuming it is truthful and in compliance with the Australian Consumer Law (ACL).

Despite claimed consumer dissatisfaction with claims about 'local and imported ingredients' the level of consumer complaint to confectionery industry members relating to country of origin is exceptionally low. One large confectionery company noted that over the past three years the only consumer complaints on country of origin related to Chinese ingredients triggered by external events. In 2015 another large confectionery/food business had less than 319 consumer contacts out of 57,000 relating to country of origin. Of these less than half were complaints and less than 0.1% related to 'from local and imported ingredients' statements.

These statistics would suggest country of origin claims with respect to confectionery are of little concern to consumers. Changing the current wording would be an unnecessary cost and burden to an industry that consumer, via the task force, have already classified to be low priority.

Non-priority food packed in Australia

Whilst, Clause 23 requires some clarification, we firstly welcome what we understand is the intended requirement to declare the country of origin of food that is from a single country where it is made (and substantially transformed in that single country) and packed in Australia (Clause 23 (2) (a)).

For food (confectionery) that potentially comes from more than one country, it suggests, a statement is required that the food is (i) 'Packed in Australia' and (ii) the 'food is of multiple origins'.

In the confectionery industry's view this is synonymous with 'Packed in Australia from imported ingredients' or 'Packed in Australia from local/Australian and imported ingredients'. An Australian company may pack a product in Australia that contains an Australian item together with a number of imported items. Additionally, some companies may be more explicit, eg 'product x made in country a, product y made in country b and product z made in country c' which would also be permitted as the wording is not prescriptive.

With some clarification, this aligns with discussions through the consultation process, that providing 'Packed in' and consumer law is met that existing 'Packed in Australia from local and imported ingredients' for confectionery, as a non-priority food, would suffice.

Given the low level of consumer interest in labelling of confectionery, we see these alternatives as appropriate. To change from 'from local and imported ingredients' to an alternate but similar term 'multiple origins', offers little value and adds expense with no consumer benefit.

Imported packed foods

Firstly for ease of use, we recommend that a note to Part 2, Division 2, Clause 15 (3), be included that references this clause as meaning 'imported' foods.

Similar, to food packed in Australia, Clause 23 (2) (b), where imported food is packed with food from more than one country (Clause 15 (3) (b) a statement to the effect that the food is from 'multiple origins' is specified. Whilst the statement is not prescriptive, our interpretation is that this may be 'Packed in Thailand with imported ingredients/food'. The term 'imported ingredients/foods' being a suitably collective term for foods from 'multiple origins'.

Meaning of significant ingredient

The draft Information Standard and safe harbour defences for grown and product rely on the term 'significant' ingredients. From the confectionery industry's perspective, clarification of the definition would be helpful in the case of sugar confectionery claiming 'product of Australia' where most of the ingredients are Australian, but some minor imported ingredients are used.

A significant ingredient does not necessarily mean a characterising ingredient. Characterising ingredients are defined in Standard 1.2.10 of the Australia New Zealand Food Standards Code as those mentioned in the name of the food, associated with the name of the food by consumers, emphasised on the label in words, pictures or graphics but doesn't mean flavouring substances and if in the name of the food, doesn't govern consumer choice.

A significant ingredient, however, may mean cost, by weight, percentage content, volume, key, major or technological function/impact on a product.

Currently, the ACCC *Country of origin claims and the Australian Consumer Law (April 2014)* guidance advises that a 'significant ingredient or component' is not necessarily related to the percentage of that ingredient and continues to illustrate this with the example of an additive, such as a preservative, that the guidance document explains is not a significant ingredient because it *does not go to the nature of the food*.

In the case of confectionery, natural colours or flavours may be characterising ingredients in a food, but may be less than 1% of the ingoing weight, eg vanilla whether bean or extract.

A jelly confectionery coated in chocolate (the chocolate has been made in Australia using imported cocoa products) has three to six percent imported cocoa products. The chocolate coating has been made in Australia, so has the jelly confectionery. Does this make it 'produced in Australia'?

A refined definition of 'significant ingredient' should provide sufficient clarification without the need for percentage of weight of ingoing ingredients of the food.

Substantial transformation

Although the lists of changes/processes that are/are not considered to be substantial transformation are too many to mention, we advocate these lists be included in industry guidance and expanded to include more challenging industrial situations. This would make the resource more robust and offer better guidance and clarity to industry and consumers.

A resource such as this in guidance has greater opportunity for periodic review and ability to change more responsively should it be required.

Small packages

In conjunction with the small pack exemption (Part 2, Division 1, Clause 14 (3)) from use of the logo and bar chart, to remove doubt, we suggest inclusion of a note to this clause that simply indicates the statement in a box is not required for non-priority foods.

Although not relevant for confectionery as a non-priority food, we also note that packages with a surface area greater than 100cm² may have difficulty adopting the country of origin mark. We suggest the size specification for the exemption may require reconsideration, especially where legibility may be impacted.

Legibility requirements – style guide

We offer our assistance to review the proposed style guide that is being developed to support the specifications for labelling permitted by the Information Standard, when it becomes available.

In relation to comments around permitted colours, as we have advocated previously, we want to ensure permission to use monochrome colour offers the flexibility to use colours from the existing print colour palette. This is not only a reference to black or white. Black or white, green and gold may not exist in a label print palette so flexibility is important to minimise any cost imposition.

Decision tree

We strongly support development of a decision tree tool to guide industry through the decision making process of country of origin food labelling – covering the type of origin claim, elements used (logo, bar chart and text) and how this applies for both Australian, imported, priority/non-priority foods and small packages.

The Ai Group Confectionery Sector welcome the opportunity to facilitate testing of this tool with its members.

Transitional provisions

For confectionery, the Ai Group Confectionery Sector supports a minimum 24 month implementation followed by a 12 months stock in trade provision. This approach provides some flexibility and is similar to other food labelling implementation timelines. Short of a

longer transition, this is the most effective way to minimise the business cost burden that would otherwise double with a shorter timeframe, including packaging write-off.

Packaging considerations go beyond the typical 'retail' unit and involve multiple layers. The information across all layers needs to align. Despite best efforts they are unlikely to fully align and so despite the most proficient business it is expected there will be packaging write-off.

Depending on packaging ordering timelines some companies may have 6-9 months of packaging on hand. Smaller companies may have more as they order to capitalise on price. Specialty imported packaging materials may also have 6 month lead times to source, print and ship to Australia. Packaging particularly for seasonal or low volume products, may result in ordering as much as two years supply in advance.

Additionally, outer and shipper cartons may also be impacted, particularly where they double in some retail environments as the retail unit. This will have a multiplier effect on the cost of implementation.

Some SMEs will experience a larger impact where their number of SKUs may be significantly higher than a multinational. With lower turnovers than their multinational competitors the impact will be more pronounced.

Even minor label changes, that may be required for the confectionery industry, will cost a approximately \$2000 per SKU before any administrative considerations. For an SME with 400 SKUs in their portfolio this will amount to in excess of \$800,000 despite consumers indicating a low level of interest for confectionery.

Although periodic regulatory reviews need to be performed and this might typically be two years after gazettal, industry needs to know there is certainty and that they system will be in place for a reasonable period without further impost and change. Regulatory change comes at a significant price to industry. It is therefore important to ensure longevity of the decision with regard to the treatment of confectionery as a non-priority food.

Education campaign

The Ai Group Confectionery Sector supports the requirement for a comprehensive consumer and industry education campaign. This is essential to support and communicate the revisions and assist businesses to comply and to educate consumers to understand the labels.

Guidance materials, such as the above mentioned decision tree, will form valuable supplementary materials to the regulatory requirements and support the education activities.

Thank you again for the opportunity to comment on country of origin labelling review. We look forward to participating as its development continues, including in the review and assessment of the proposed decision tree tool and style guide.

If you have any queries or require further information, please do not hesitate to contact Jennifer Thompson on jennifer.thompson@aigroup.com.au or 03-98670181.