
The Parliament of the Commonwealth of Australia

A clearer message for consumers

Report on the inquiry into country of origin labelling for food

House of Representatives
Standing Committee on Agriculture and Industry

October 2014
Canberra

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ISBN 978-1-74366-219-9 (Printed version)

ISBN 978-1-74366-220-5 (HTML version)

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Foreword

There have been a number of inquiries into Australia's food labelling system in the last ten years, even though most, including the extensive 'Labelling Logic' Blewett Review, have focussed on a wide range of issues surrounding food labelling and safety.

When considering an inquiry topic the Committee was of the opinion that while other reports had made recommendations in the area of country of origin food labelling, considerable public confusion and frustration remained and that the topic was one which was repeatedly raised by consumers on media such as talk-back-radio.

Accordingly the Committee requested support from the Ministers of Industry and Agriculture to mount a specific inquiry into the issue with an aim of recommending possible modifications which would provide clarification to the general public while at the same time taking great care not to inflict anti-competitive burdens on our food manufacturers and growers.

The Committee agreed on 27 March to undertake an inquiry into Australia's country of origin food labelling. During the course of the inquiry the Committee received 54 submissions, seven supplementary submissions, held seven public hearings in Melbourne, Sydney, Brisbane and Canberra, and spent a day in Adelaide visiting and meeting food manufacturers to gauge their views in the workplace environment.

It became clear very early in the inquiry that the 'safe harbour' descriptors were in some cases not providing any information to the general public as to the origin of food products. While in most cases industry are complying with the law, often using the 'safe harbour' descriptors, the general public did not understand what they mean.

It was made quite clear to the Committee that the country of origin of food is not overly important to many and that relevant information is considered less important on heavily processed foods. However, to a significant and important sector of the market, country of origin information is important and clear information should be provided to the consumer.

The Committee was of the opinion that any country of origin food labelling regime should not present an impediment to importers and/or provide non-tariff trade protection to our industries, but it should provide clear information to consumers who wish to make an independent choice to support either Australian farmers or food manufacturers.

The Committee strongly supports the current labelling system's non-prescriptive manner in the way a food manufacturer or marketer should represent a particular food's country of origin status.

Some examples include front or back of pack labelling, focus on particular regions or specific countries for the origin of selected ingredients and logos or individualised wording. These are all acceptable as long as they provide the minimum information and are not false, misleading or deceptive. Consequently, the Committee has limited its suggestions for change to the country of origin labelling system to adjustments to the 'safe harbour' claims.

It is the Committee's opinion that none of the recommended changes would have any significant negative impact on Australian producers or manufacturers but that the core recommendations concerning the 'safe harbour' claims will provide common sense information that consumers can understand.

At the heart of the recommendations is that each item should have a separate reference to the ingredients and the manufacture of goods. It keeps the best of what is good with the Australian country of origin statements, provides some specialised language that puts some separation between food and other products in the Australian market and most importantly addresses the confusion surrounding the 'Made in Australia' and 'Made in Australia from local and imported ingredients' descriptors.

The Committee would like to express its appreciation to all who have contributed their valuable time and shared their experience with us throughout the course of the inquiry.

Rowan Ramsey MP
Chair



Membership of the Committee

Chair Mr Rowan Ramsey MP

Deputy Chair Ms Clare O'Neil MP

Members	Hon Joel Fitzgibbon MP	Ms Melissa Price MP
	Ms Michelle Landry MP	Mr Dan Tehan MP
	Ms Cathy McGowan AO MP	Mr Rick Wilson MP
	Mr Tony Pasin MP	Mr Tony Zappia MP

Committee Secretariat

Secretary	Ms Julia Morris
Inquiry Secretary	Mr Anthony Overs
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Research Officer	Ms Leonie Bury
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Terms of reference

The Committee is to inquire into Australia's Country of Origin Food Labelling Laws with particular attention to:

- whether the current Country of Origin Labelling (CoOL for food) system provides enough information for Australian consumers to make informed purchasing decisions;
- whether Australia's CoOL laws are being complied with and, what, if any, are the practical limitations to compliance;
- whether improvements could be made, including to simplify the current system and/or reduce the compliance burden;
- whether Australia's CoOL laws are being circumvented by staging imports through third countries; and
- the impact on Australia's international trade obligations of any proposed changes to Australia's CoOL laws.



List of abbreviations

ACCC	Australian Competition and Consumer Commission
<i>ACCC's Guide for business</i>	Australian Competition and Consumer Commission's <i>Country of origin claims and the Australian Consumer Law: a guide for business</i> (April 2014)
ACL	Australian Consumer Law
AMAG Code of Practice	<i>Australian Made, Australian Grown Logo Code of Practice</i>
AMAG logo	Australian Made, Australian Grown logo
AMCL	Australian Made Campaign Limited
Codex	Codex Alimentarius Commission
CTD Act	<i>Commerce (Trade Descriptions) Act 1905</i>
FSANZ	Food Standards Australia New Zealand
GATT	<i>General Agreement on Tariffs and Trade</i>
TBT Agreement	<i>Technical Barriers to Trade Agreement</i>
the Code	<i>Australia New Zealand Food Standards Code</i>
the Standard	Standard 1.2.11 (Country of origin labelling) of the <i>Australia New Zealand Food Standards Code</i>

TTMRA Trans-Tasman Mutual Recognition Arrangement

WTO World Trade Organisation



List of recommendations

Proposed solutions and improvements

Recommendation 1

The Committee recommends that the Australian Government implement the following country of origin labelling safe harbours:

- 'Grown in' – 100 per cent content from the country specified;
- 'Product of' – 90 per cent content from the country specified;
- 'Made in [country] from [country] ingredients' – 90 per cent content from the country specified;
- 'Made in [country] from mostly local ingredients' – more than 50 per cent Australian content;
- 'Made in [country] from mostly imported ingredients' – less than 50 per cent Australian content.

Recommendation 2

The Committee recommends that the Australian Government amend Standard 1.2.9 of the *Australia New Zealand Food Standards Code* that will allow for prescription of country of origin label text information on packaged foods to be increased in size compared with surrounding text on a product label.

Recommendation 3

The Committee recommends that the Australian Government increase its scrutiny of products with mostly or all imported ingredients that use misleading Australian symbols, icons and imagery.

Recommendation 4

The Committee recommends the introduction of a visual descriptor that reflects the safe harbour thresholds of Australian ingredients in the content of a product.

Recommendation 5

The Committee recommends that the Australian Government, in conjunction with industry and consumer advocacy groups, develop and implement an education program designed to raise awareness of country of origin labelling rules, regulations, requirements and impacts, for consumers and industry. The program should be developed and implemented following any changes that have been adopted in response to this report.

Recommendation 6

The Committee recommends that the Australian Government, in co-operation with industry, investigate the use of bar code technology in the presentation of product information for consumers, with a view to implementing a voluntary system for producers and manufacturers. Any system developed should be highlighted as part of a consumer education campaign.

Recommendation 7

The Committee recommends that the Northern Territory's country of origin labelling of seafood in the food service sector be referred to the Council of Australian Governments for consideration.

Recommendation 8

The Committee recommends that the Department of Industry undertake specific liaison with the New Zealand Government to reach an agreed interpretation and understanding of the provisions of the Trans-Tasman Mutual Recognition Arrangement and the *Commerce (Trade Descriptions) Act 1905*, as they relate to country of origin labelling for food.

Introduction

- 1.1 Country of origin food labelling has been the topic of many public reviews as well as many unsuccessful legislative reform attempts in the past decade.
- 1.2 Consumers and peak advocacy groups claim that there is confusion around the various country of origin labelling claims for food products in Australia. A certain level of confusion also exists for food producers and manufacturers, leading to compliance issues.
- 1.3 The level of dissatisfaction with the existing labelling framework indicates that a system which is designed to inform and guide industry and consumers may need to be overhauled.
- 1.4 This report aims to examine options for improvement or possible changes to country of origin labelling law and policy.

Background to the inquiry

- 1.5 The Committee agreed on Thursday, 27 March 2014 to inquire into and report on country of origin food labelling. The inquiry was referred to the Committee by the Minister for Agriculture, the Hon Barnaby Joyce MP and the Minister for Industry, the Hon Ian Macfarlane MP.
- 1.6 The Terms of Reference called for the Committee to inquire into and report on country of origin food labelling, with particular regard to:
 - whether the current Country of Origin Labelling (CoOL for food) system provides enough information for Australian consumers to make informed purchasing decisions;
 - whether Australia's CoOL laws are being complied with and what, if any, are the practical limitations to compliance;

- whether improvements could be made, including to simplify the current system and/or reduce the compliance burden; and
 - whether Australia's CoOL laws are being circumvented by staging imports through third countries; and
 - the impact on Australia's international trade obligations of any proposed changes to Australia's CoOL laws.
- 1.7 The inquiry was advertised in *The Australian* and on social media. The Committee sought submissions from relevant Australian Government ministers and from state and territory governments. In addition, the Committee sought submissions from a wide range of industry and consumer peak and representative bodies, and food producers and manufacturers.
- 1.8 The Committee received 54 submissions and eight supplementary submissions. One submission was confidential. The submissions are listed at Appendix A.
- 1.9 The Committee held seven public hearings in Melbourne, Sydney, Brisbane and Canberra. Public hearing details are listed at Appendix B.

Structure of the report

- 1.10 Chapter two provides an overview of the current framework that regulates country of origin food labelling in Australia.
- 1.11 Chapter three examines the rates of compliance with the existing labelling regime, and how it is enforced by regulators.
- 1.12 Chapter four explores issues and concerns raised during the inquiry that impact on consumers and industry.
- 1.13 Chapter five examines how Australia observes its international trade obligations.
- 1.14 Chapter six discusses several recent reviews of country of origin labelling for food, providing a summary of key areas of concern, recommended areas for reform and apparent difficulties with previous reform proposals.
- 1.15 Chapter seven examines proposed solutions or improvements for the country of origin food labelling system.

The current regulatory framework

- 2.1 In order to frame this report and recommendations contained within, this chapter explains the current framework that regulates country of origin food labelling in Australia and addresses some of the myths which have caused so much reported confusion and consternation for consumers and industry. Comments from industry and consumer organisations and individuals are considered and explored in chapters four and seven.
- 2.2 The regulatory framework for country of origin food labelling is established by two regulatory systems working in tandem. The *Australia New Zealand Food Standards Code* specifies which foods must state their country of origin, while the Australian Consumer Law regulates what descriptors can be put on the label by the producer, manufacturer or retailer.
- 2.3 The *Australia New Zealand Food Standards Code* and the Australian Consumer Law are explained below. The chapter will then address the use of pictorial representations and registered trademarks that can also indicate to consumers the food product's country of origin. Finally, the chapter will discuss the Australian Made Campaign.

Australia New Zealand Food Standards Code

Overview

- 2.4 The *Australia New Zealand Food Standards Code* (the Code)¹ establishes which foods must have a country of origin statement on their labels. The Code is developed and maintained by Food Standards Australia New

1 *Australia New Zealand Food Standards Code* <www.foodstandards.gov.au/code>, accessed 1 September 2014.

Zealand (FSANZ), an independent statutory authority established under the *Food Standards Australia New Zealand Act 1991*.²

- 2.5 FSANZ does not have powers in respect of enforcement of the standards in the Code. Enforcement is the responsibility of State and Territory and New Zealand agencies that adopt the Code in their respective jurisdictions. The compliance and enforcement practices of these regulators are addressed in chapter three.

Categories of food

- 2.6 Standard 1.2.11 of the Code (the Standard) sets out the requirements for mandatory country of origin labelling. The Standard separates foods into two categories: packaged foods and unpackaged foods. These two categories have different country of origin labelling requirements and provide some specific exemptions within each category. They are explained below.
- 2.7 The Standard does not apply to food offered for immediate consumption where the food is sold by restaurants, canteens, schools, caterers, self-catering institutions, prisons, hospitals or other similar institutions such as nursing homes.³ Consequently, foods sold or otherwise supplied in these venues do not require a country of origin statement on their labels.

Packaged foods

- 2.8 The Standard requires packaged foods to be labelled with a statement on the packaging that identifies the country where the food was made, produced or grown.⁴ The following foods are exempt from country of origin labelling under the Standard:
- foods made and packaged on the premises from which they are sold;
 - foods delivered packaged, and ready for consumption, at the express order of the purchaser;
 - food sold at a fundraising event; and
 - foods packaged and displayed in an assisted service display cabinet.⁵

2 *Food Standards Australia New Zealand Act 1991* <www.comlaw.gov.au/Details/C2004C00171>, accessed 1 September 2014.

3 *Australia New Zealand Food Standards Code*, clause 1; Food Standards Australia New Zealand, *Submission 12*, p. 2.

4 *Australia New Zealand Food Standards Code*, clause 2; Food Standards Australia New Zealand, *Submission 12*, p. 3.

5 Food Standards Australia New Zealand, *submission 12*, p. 3.

Unpackaged foods

- 2.9 Unpackaged fruit, vegetables, nuts, spices, herbs, fungi, seeds, fish and most types of seafood, pork, beef, veal, lamb, hogget, mutton, and chicken (or a mix of these foods) must be labelled with a statement on, or in connection with, the display of the food.⁶ These statements must either identify the country or countries of origin of the food, or, 'indicate that the food is a mix of local and imported foods or a mix of imported foods'.⁷
- 2.10 Unpackaged foods for retail sale that do not fall into the above list do not require country of origin labelling.

Other relevant labelling requirements under the Code

- 2.11 The Code also requires all statements mandated by the Code to be legible and prominent 'such as to afford a distinct contrast to the background, and must be in the English language'.⁸
- 2.12 Standard 1.2.9 (Legibility Requirements of the Code) establishes that the statement provided for unpackaged foods must be at least nine millimetres in height, or five millimetres in height if the food is in a refrigerated assisted service display cabinet. There are no conditions for the height of a country of origin statement on packaged foods.

Australian Consumer Law

- 2.13 While the Code specifies which foods must have country of origin labelling, the Australian Consumer Law (ACL), as set out in Schedule 2 of the *Competition and Consumer Act 2010*, establishes some general principles that guide industry about the terms which can be used on a label to indicate the food product's country of origin and under what circumstances they are to be calculated. The ACL is enforced by the Australian Competition and Consumer Commission (ACCC) at the federal level, and by the respective state and territory fair trading commissions. The compliance and enforcement activities of these regulators are addressed in chapter three.
- 2.14 The ACL applies to all goods and products, not just food products. However to reflect the Committee's specific inquiry into food origin

6 Food Standards Australia New Zealand, *submission 12*, p. 3.

7 Food Standards Australia New Zealand, *submission 12*, p. 3.

8 Standard 1.2.9 – Legibility Requirements of the Code; Food Standards Australia New Zealand, *submission 12*, p. 3.

labelling, these provisions will be discussed solely in relation to food products.

- 2.15 Importantly, the ACL does not prescribe explicit rules as to the claims that can be made to satisfy the country of origin requirements as outlined in the preceding section. Rather, the starting point of the ACL is that labels cannot be false, misleading or deceptive.⁹ Businesses are free to employ any terminology to satisfy the Code's origin labelling requirements, so long as it is not false, misleading or deceptive.

'Safe harbour' defences

- 2.16 To reduce complexity, uncertainty and regulatory burden for businesses, the ACL framework provides that country of origin descriptors are considered not to be false, misleading or deceptive where specific 'safe harbour' defences are satisfied.¹⁰
- 2.17 Where a label is able to satisfy one of the country of origin safe harbours in the ACL, it will not be false, misleading or deceptive.¹¹ The following safe harbour criteria are established by the ACL:
- claims that goods are 'produced in' or the 'product of' a certain country;
 - claims that goods or certain ingredients are 'grown in' a particular country; and
 - general country of origin claims where the above claims do not apply, which would permit claims such as 'made in' a particular country.¹²
- 2.18 Most food products will fall into one of these three categories, and most food producers or retailers will use these safe harbour defences.

9 Chapter 5 Part 5-4 of the ACL specifically applies to country of origin claims. The key provisions include:

Section 18 of the ACL, a very general prohibition, states that: (1) A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive'.

Section 29(1) of the ACL contains a broad prohibition which states that: A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services: **(a)** make a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use'; and **(k)** 'make a false or misleading representation concerning the place of origin of goods'.

Section 33 of the ACL provides that 'a person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quality of any goods'.

10 Department of Industry, *submission 20*, p. 2.

11 ACL, s 255.

12 ACL, s 255.

According to the ACCC, 'traders have a strong incentive to make claims with reference to the safe harbours where they know they are in a position to establish the defence'.¹³

- 2.19 However, there will be a limited number of food products that, because of their production processes, will not fall within one of the safe harbour defences. Businesses are entitled to use any terminology to satisfy the legal requirement that food products are labelled with a country of origin statement, providing they are not false or misleading.¹⁴
- 2.20 Further, the safe harbours established under the ACL are not country-specific, and will apply equally to food labels which claim an Australian origin or another country of origin. However, a business cannot rely on a safe harbour for a region or place of origin claim. For example, if a wine is labelled 'product of the Barossa Valley', the producer cannot use the 'produce of' safe harbour defence and will therefore still be required to state its country of origin.¹⁵
- 2.21 The three safe harbour defences ('product of', 'grown in' and 'made in') are discussed further below.

'Product of ...' or 'Produce of ...'

- 2.22 The ACL establishes the following test for the 'product of' safe harbour defence:
- the country was the country of origin of each significant ingredient or component of the good; and
 - all, or virtually all processes involved in the production or manufacture happened in that country.¹⁶
- 2.23 If a manufacturer or retailer can satisfy these two tests, they will not contravene the key provisions under the ACL for false, misleading or deceptive conduct.
- 2.24 The 'product of' descriptor is most often used for processed food, but is also used for fresh produce. For example, if 'Product of Australia' appears on a packet of smoked salmon, this means the salmon was both caught and smoked in Australia.

13 Australian Competition and Consumer Commission, *submission 41*, p. 8.

14 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014. Available at <www.accc.gov.au/system/files/Country%20of%20origin%20and%20the%20Australian%20Consumer%20Law.pdf>, accessed 1 September 2014, p. 7.

15 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 15.

16 ACL, s 255(1), Item 2.

- 2.25 Released in April 2014, the ACCC's *Country of origin claims and the Australian Consumer Law: a guide for business (ACCC's Guide for business)* advises that the question of 'significant ingredient' is not necessarily related to the percentage of that ingredient.¹⁷
- 2.26 The Department of Industry advised that where, for example, the descriptor was used for an Australian food product, it would mean that close to 100 per cent of the product is Australian.¹⁸ It is consequently considered a premium claim on the domestic market.
- 2.27 'Product of Australia' claims are likely to be difficult to sustain for any product with a significant imported ingredient. The ACCC's *Guide for business* advises:

Any food or beverage product that depended on an imported ingredient for its specific nature or identity would not be eligible for the 'produce of Australia' safe harbour defence. The manufacturer may therefore be at risk of action by the ACCC, or any other person, under the ACL, or a state or territory food regulator under the relevant Food Act.

Packaged or processed foodstuffs and beverages are often complex products. They may undergo a series of processes and may contain a range of ingredients, and the ingredients may also come from several sources. If any of these processing locations or sources of ingredients are not within Australia, a 'produce of Australia' claim would be difficult to sustain.¹⁹

- 2.28 The example below shows the 'product of' safe harbour in practice.

Apple and cranberry juice

If a business selling apple and cranberry juice wanted to promote their product as 'product of Australia' and wished to rely on the safe harbour defence both the apple and cranberry juice would have to be sourced from Australia. This is despite the cranberry juice being, on average, about five per cent of the total volume of the product. If, however, a local source can be found for the apple juice and the cranberry juice, then it would be legitimate to rely on the safe harbour defence for 'a product of Australia' label, even if, say, a preservative was added to the juice and the preservative was imported. This is because the preservative does not go to the nature of the good.

Source: *Explanatory Memorandum, Trade Practices Amendment (Australian Consumer Law) Bill No. 2 2010*, p. 367.

- 17 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 12.
- 18 Mr Paul Trotman, Acting Division Head, Business Competitiveness and Trade, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 5.
- 19 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 12.

'Grown in ...'

- 2.29 The safe harbour defence for 'grown in' states that an individual, manufacturer or retailer will not contravene the key provisions for false, misleading or deceptive conduct where the food can meet the following requirements:
- each significant ingredient of the food was grown in that country; and
 - all, or virtually all, processes involved in the production or manufacture happened in that country.²⁰
- 2.30 The 'grown in' descriptor is mostly used for fresh produce.²¹ For example, if a 'Grown in Australia' label appears on an apple, it was grown in Australia.

How is 'grown in' defined?

- 2.31 According to the ACCC's *Guide for business*, ingredients are grown in a country if they:
- are materially increased in size or materially altered in substance in that country by natural development; or
 - germinated or otherwise arose in, or issued in, that country; or
 - are harvested, extracted or otherwise derived from an organism that has been materially increased in size, or materially altered in substance, in that country by natural development.²²
- 2.32 The example below shows the 'grown in' safe harbour in practice.

Prawns grown in Australia

The claim on black tiger prawns naturally developed in an Australian aquaculture production system from Australian prawn larvae produced in an Australian landed hatchery, but where the wild caught prawn spawners or brood stock may not have come from Australian waters, is likely to satisfy the criteria for the 'grown in' defence.

Source: ACCC, *Country of origin claims and the Australian Consumer Law: a guide for business*, April 2014, p. 14.

'Ingredient grown in' safe harbour defence

- 2.33 The ACL also extends this safe harbour for claims that ingredients of foods were grown in a particular country. An example of this might be a

20 ACL, s 255(1), Item 4.

21 Mr Paul Trotman, Acting Division Head, Business Competitiveness and Trade, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 5.

22 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 14.

bag of mixed nuts which is labelled with a claim, 'made with Australian grown almonds'.

2.34 To establish this safe harbour defence, the following requirements must be met:

- the country claimed could also be represented as the country of origin of the goods, or the country of which the goods are the produce of, in accordance with the safe harbour defence requirements for such claims; and
- each ingredient or component that is claimed to be grown in that country was grown only in that country; and
- each ingredient that is claimed to be grown in that country was processed only in that country; and
- fifty per cent or more of the total weight of the goods is comprised of ingredients or components that were grown and processed only in that country.²³

2.35 The example below shows the 'ingredient grown in' safe harbour in practice.

Minted packaged peas using Australian grown peas and other imported ingredients

A claim on a packet of snap frozen minted peas where the peas were germinated and harvested and packaged in Australia, but where the mint was imported into Australia from China for packaging with the peas, is likely to satisfy the 'ingredient grown in' safe harbour defence. This is because the peas are deemed to be the significant ingredient and 85 per cent or more of the total weight is comprised of peas grown and processed in Australia.

Source: ACCC, Country of origin claims and the Australian Consumer Law: A guide for business, April 2014, p. 14.

General claims such as 'Made in...'

2.36 The ACL establishes a 'general country of origin' safe harbour for claims such as 'made in'. If a label is relying on the general country of origin safe harbour defence two separate criteria must be met:

- the food must be substantially transformed in the country of origin being claimed (the substantial transformation test); and
- fifty per cent or more of the total costs to produce or manufacture the food product must have occurred in that country claimed (cost of production/manufacture test).²⁴

2.37 If food products pass both of these criteria for a particular country, the manufacturer (or retailer) may make a claim that the goods are made in

²³ ACL, s 255(1), Item 5.

²⁴ ACL, s 255(1), Item 1.

- that country and that this claim will not attract liability under the key provisions for false, misleading or deceptive conduct under the ACL.
- 2.38 Importantly, such claims go to production or manufacture rather than content. A food product with a 'Made in Australia' label will 'not necessarily contain Australian ingredients'²⁵, though the Department of Industry stated it would be 'surprising' if the requirements of the safe harbour could be met without any Australian contents in the food product.²⁶
- 2.39 For example, if 'Made in Australia' appears on a jar of jam, this means the jam was made in Australia and at least half of the cost of making the jam was incurred in Australia. It does not necessarily mean that the ingredients for the jam were grown or sourced in Australia. Throughout its inquiry, the Committee heard evidence that this is contrary to the majority of consumers' understandings of the 'Made in Australia' descriptor. These issues are discussed further in chapter four.
- 2.40 More information on the two tests (substantial transformation and cost of production or manufacture) is provided below.

Substantial transformation test

- 2.41 The ACL provides that goods will be 'substantially transformed' in a country if they undergo a:
- ... fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.²⁷
- 2.42 However, the ACL does not define 'fundamental change'. The ACCC's *Guide for business* states that the basic idea is that the finished product would be regarded as a new and different product from that imported.²⁸
- 2.43 For example, reconstitution of imported fruit juice concentrate into fruit juice for sale – whether or not Australian water, sugar, preservatives and packaging were used – would not constitute substantial transformation.²⁹

25 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 7.

26 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade & International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 5.

27 ACL s 255(3).

28 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 8.

29 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 10.

- 2.44 Some further examples of the substantial transformation test in practice are below.

Apple pies

A business sells apple pies. The labelling of the pie says, 'Made in Australia'. The packaging, pastry and apple filling are created in Australia and the pie is made (i.e. the pie is constructed and baked) in Australia, but all of the apples are from New Zealand. It is probable that the substantial transformation test of the safe harbour defence could be satisfied in the circumstances. If the threshold of 50 per cent of total costs is also reached so as to satisfy the cost of production/manufacture test, the safe harbour defence should be established. On the other hand, a claim of 'Australian Apple Pie' may be more likely to mislead as it may be taken to apply to the ingredients rather than the product (apple versus pie) and would then be subject to the more onerous 'produce of' or 'grown in' safe harbour defences.

Canned apricots

A business sells preserved 'Australian made diced apricots'. The apricots are sourced from South Africa, diced and canned in syrup in Australia, for sale as a pantry item. The ACCC would have difficulty accepting the goods were substantially transformed by merely dicing the apricots. If however, the diced apricots were combined with jelly in Australia and sold as 'Australian made fruit cups', it is probable that the substantial transformation test of the safe harbour defence could be made. The goods would still need to meet the total cost of production/manufacture test in order to satisfy the safe harbour defence.

Source: ACCC, *Country of origin claims and the Australian Consumer Law: A guide for business*, April 2014, p. 9.

- 2.45 Satisfying the substantial transformation test does not itself enable food products to meet the general country of origin defence. The cost of production/manufacture test must also be met.

Cost of production/manufacture test

- 2.46 The second part of the general country of origin defence is that 50 per cent or more of the total cost of production, or manufacture, is attributable to the country claimed to be the country of origin. This test is 50 per cent content by value, not volume of the food product.³⁰
- 2.47 These costs are calculated by adding up the costs of the amounts of expenditure on materials, labour and overheads in respect of the goods.³¹ The ACCC's *Guide for business* advises that the cost of materials used in the

30 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade & International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 7.

31 ACL, ss 256 and 257.

production or manufacturing of the goods is the sum of costs incurred by the manufacturer of the goods, and that this will include:

- purchase price;
- overseas freight and insurance;
- port and clearance charges;
- inward transport to store; and
- retail packaging for sale (this does not include packaging related to the transportation of the goods such as pallets).³²

2.48 The ACCC is of the view that the following are unlikely to be included in calculating the costs of materials:

- customs and excise duty;
- sales tax; and
- goods and services tax.³³

2.49 Expenditure on labour is the 'sum of each labour cost incurred by the manufacturer of the goods that can be reasonably allocated to the production or manufacture of the goods'.³⁴ The following labour costs (wages as well as employee benefits) will be included for workers engaged in:

- the manufacturing process;
- management of the manufacturing process;
- supervision and training of workers engaged in the manufacturing process;
- the quality control process;
- packaging goods into inner containers; and
- handling and storage of goods.

2.50 Expenditure on overheads in respect of the goods is the sum of each overhead cost incurred by the manufacturer that can be reasonably allocated to the production or manufacture of the goods. According to the ACCC, this will include:

- inspection and tests of goods;
- insurance and leasing of equipment;
- vehicle expenses; and
- storage of goods at the factory.³⁵

32 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 10.

33 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 10.

34 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 10.

35 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 11.

'Made in ... from local and imported ingredients'

- 2.51 There is no specific safe harbour defence under the ACL for labels that state 'made in ... from local and imported ingredients'. The descriptor is most commonly employed to allow for changes in the availability of ingredients, particularly due to seasonality of fruit and vegetables.
- 2.52 However, this descriptor does not explain what proportion of the ingredients are local or imported. For example, If 'Made in Australia from local and imported ingredients' appears on a can of vegetable soup, some of the tomatoes, carrots, celery, potatoes, as well as a range of other ingredients, could be vegetables grown in Australia or any other country.
- 2.53 Contrary to the understanding of some industry representatives,³⁶ the soup will still need to satisfy the general safe harbour, 'made in', as explained by the Department of Industry:
- So if you have 'made in Australia from local and imported ingredients', which is the concern that many consumers have and that you have raised here, it does not matter whether you make that full statement or just 'made in'. The only way you are covered by the safe harbour is if you meet the 50 per cent content and the substantial transformation requirement. If you do not meet that requirement you must be able to demonstrate that you are not being false, misleading or deceptive to the ordinary consumer by making that statement.³⁷
- 2.54 Further, the provision of additional information ('local and imported ingredients' for example) must be relevant and useful and must not be false, misleading or deceptive.³⁸
- 2.55 The ACCC's *Guide for business* echoes this general principle:
- A 'Made in Australia from local and imported ingredients' claim must not be misleading. The provision of extra information beyond 'Made in Australia' should clarify the origin of the components and not confuse consumers.³⁹

36 Australian National Retailers Association, *submission 21*, p. 2;
Citrus Australia - SA Region, *submission 28*, p. 3;
Australia Industry Group, *submission 48*, p. 4.

37 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade & International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 5.

38 Department of Industry, *submission 20.1*, p. 4.

39 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law - A guide for business*. April 2014, p. 17.

2.56 The *Guide for business* released in April 2014 represents a change in position within the ACCC.⁴⁰ It provides a detailed discussion of the complexity of providing consumers with extra information ('from local and imported ingredients') but also how that extra information can then subsequently confuse consumers. The ACCC's *Guide for business* states:

On one hand the phrase is truthful, in that it alerts the consumer to the presence of imported content. On the other hand, it also emphasises the presence of local content. It is therefore unclear what the percentage of local content is or what relative roles the imported and local contents play in the final product. This form of claim is the subject of frequent complaints to the ACCC, on the basis that the term itself is potentially misleading ... Care should be taken, though, if the Australian content is minimal. Small amounts of content from a particular country should not be used to claim its connection with Australia or any other origin ... The most useful approach is to provide sufficient information to resolve these issues. Two positive aspects of this approach are: less risk of misleading consumers; and better customer relationships by improving customers' knowledge of your products. One approach could be to state the actual country of origin of imported components or ingredients and the approximate proportions of them in the product.⁴¹

40 Department of Industry, *submission 20.1*, p. 4;
CHOICE, *submission 47*, p. 7;
Ms Angela Cartwright, Campaigns Manager, CHOICE, *Committee Hansard*, Sydney, 9 May 2014;
Australian Made Campaign Limited, *submission 18*, p. 8.

41 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 18.

2.57 Two different examples of this advice in practice are provided below.

Australian mashed peas made from local and imported ingredients

It is unlikely that consumers would expect a product advertised as 'Australian mashed peas made from local and imported ingredients' to include imported peas. The additional information, made from local and imported ingredients, could appropriately convey that aside from the Australian peas, a number of other ingredients, local and imported, such as seasoning, had been used in the process of manufacture.

Apple and cranberry juice

It is not likely that consumers would be misled if a label on a juice product, where the producer is accounting for seasonality of produce, stated 'Local ingredients used most of the year, imported ingredients used from October to December', when also including on packaging the date the produce was made to allow consumers to discern whether imported or Australian produce is used.

Source: ACCC, *Country of origin claims and the Australian Consumer Law: A guide for business*, April 2014, p. 18.

A contentious issue: 'water neutrality' and the ACL

- 2.58 The water content of a food product may be included as part of its 'Australian' content for the purposes of a 'Made in Australia' claim or 'Product of Australia' claim. However, the ACCC has issued guidance which indicates that the mere reconstitution of a product, such as imported apple juice concentrate, would not constitute substantial transformation for the purposes of the general country of origin safe harbour, and would be insufficient to make an 'Australian made' claim.
- 2.59 For 'Grown in' claims, the ACL provides that water used to reconstitute the food product will be treated as having the same origin as the ingredient, regardless of whether Australian water is used.
- 2.60 Evidence to the inquiry suggests that water neutrality is a significant issue for industry and is explored further in chapter four of the report.

Pictorial representations

- 2.61 Apart from the text or logo representations about a food's country of origin, food manufacturers and retailers often use iconic imagery or other pictorial representations which might indicate to a consumer a product's country of origin. An example might be using a kangaroo, koala, Australian flag, boomerang, and other iconic images on the packaging of products.

- 2.62 The Department of Industry advised that the prohibition against a false, misleading or deceptive representation on a label would extend to the use of pictures and iconography:
- Any representation as to the country of origin is conceivably caught by the consumer law as being false, misleading or deceptive representation. That would include pictorial representations as much as it would include words.⁴²
- 2.63 The ACCC similarly stated that:
- ... it is illegal to make false or misleading claims about the country of origin of goods [which] includes displaying symbols usually associated with a particularly country (for example, the Australian flag or a kangaroo) on goods or their packaging.⁴³
- 2.64 There are further limitations on the use of the Australian flag on imported goods. Under the *Customs (Prohibited Imports) Regulations 1956*, prior to any importation, importers require approval from the Department of the Prime Minister and Cabinet for 'the design of the representation of the Australian National Flag on the relevant items'.⁴⁴ As these requirements apply to imports only, domestic producers who use the Australian flag for commercial purposes can do so without formal permission. However, the general prohibition of misleading and deceptive conduct under the ACL still applies to domestic producers and importers alike.
- 2.65 Pictorial representation is a significant issue for both consumers and industry and is discussed in detail in chapter four of the report.

The Australian Made, Australian Grown logo

- 2.66 The Australian Made Campaign Limited (AMCL) is a not-for-profit company set up in 1999 to administer the Australian Made, Australian Grown logo (AMAG logo). The AMAG logo consists of a stylised kangaroo inside a triangle and is a registered certification trademark. As a certification trademark, businesses apply to the AMCL to use the AMAG

42 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade & International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, pp. 12-13.

43 Australian Competition and Consumers Commission, *submission 41*, p. 8.

44 Department of Prime Minister and Cabinet, 'It's an Honour: Australian National Flag – Commercial Use', 27 February 2014, <www.itsanhonour.gov.au/symbols/flag.cfm#commercial>, accessed 1 September 2014; see also Australian Customs and Border Protection Service, 'Prohibited and restricted imports', <www.customs.gov.au/site/page4369.asp>, accessed 1 September 2014.

logo in accordance with specific rules which govern its use. Fees are associated with the grant of a licence and are determined on the actual sales of licensed products for the previous 12 months. The minimum fee is \$300 per annum, with a maximum fee of \$25 000.⁴⁵

- 2.67 These rules are provided under the *Australian Made, Australian Grown Logo Code of Practice* (AMAG Code of Practice). The AMAG Code of Practice is approved by the ACCC and administered by AMCL.⁴⁶ The latest edition of the AMAG Code of Practice was as approved by the ACCC in July 2014.⁴⁷
- 2.68 The AMCL administers four relevant descriptors that accompany the AMAG logo: 'Australian Made', 'Product of Australia', 'Australian Grown' and 'Australian Seafood'. The four descriptors – established as four separate licences under the AMAG Code of Practice – are shown in Figure 2.1.

Figure 2.1 Australian Made, Australian Grown registered trademark



Source Australian Made Campaign Limited, 'About the logo', www.australianmade.com.au/why-buy-australian-made/about-the-logo/, accessed 1 September 2014.

- 2.69 Importantly, the AMAG logo and its administration by AMCL sits separately from the requirements under the ACL. Food products displaying the AMAG logo must also provide a country of origin

45 Australian Made Campaign Limited, 'How much does it cost', <www.australianmade.com.au/for-business/how-much-does-it-cost/>, accessed 1 September 2014.

46 Australian Made Campaign Limited, *submission 18*, p. 3.

47 The Code of Practice is available at <www.australianmade.com.au/media/57318/1406_code_of_practice.pdf>, accessed 1 September 2014.

descriptor which complies with the regulations under the Code and the ACL.⁴⁸

- 2.70 Many of the criteria established in the AMAG Code of Practice mirror those in the ACL. However as the AMAG Code of Practice exists independently of the ACL, important differences have arisen between the tests under the ACL for 'Made in' descriptors and that contained in the AMAG Code of Practice for 'Made in Australia'. This has unsurprisingly caused much confusion amongst consumers.

Criteria regulating the use of the logo

- 2.71 The rules governing the use of the AMAG logo roughly mirror the requirements under the corresponding ACL safe harbours. Each of the four descriptors is examined below.

For the logo to be used in conjunction with 'Product of Australia'

- 2.72 Mirroring the requirements under the ACL, the use of the AMAG logo with the words 'Product of Australia' requires:
- all of the product's significant ingredients to come from Australia, and
 - all, or nearly all of the manufacturing or processing has been carried out in Australia.⁴⁹

For the logo to be used in conjunction with 'Australian Grown'

- 2.73 The use of the AMAG logo with the words 'Australian Grown' requires the ACL criteria for the 'Grown in' safe harbour to be met, namely:
- each significant ingredient of the food product must be grown in Australia as defined under the ACL, and not exported and reimported; and
 - all, or virtually all, processes involved in the production or manufacture of the good must have happened in Australia, as defined under the ACL.⁵⁰
- 2.74 Reflecting the regulation in the ACL, the AMAG Code of Practice also allows the AMAG logo with the representation 'Australian Grown' followed by the name of one or more ingredients, for example, 'Australian Grown Almonds' in a packet of mixed nuts. The AMAG Code of Practice requires the following:

48 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade & International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 13.

49 *Australian Made, Australian Grown Logo Code of Practice*, July 2014, 18(a), pp. 12-13.

50 *AMAG Code of Practice*, July 2014, 18(c), p. 13.

- 50 per cent or more of the cost of manufacturing and producing the good must be attributable to production or manufacturing processes that occurred in Australia (consistent with s 256 and s 257 of the ACL); and
- 90 per cent or more of the total ingoing weight of the good must consist of ingredients or components which have been grown in Australian and/or water harvested in Australia; and
- 100 per cent of each ingredient/s specified in the claim must have been grown in Australia; and
- the ingredients specified must not have been exported from Australia and reimported in a different form; and
- the representation must always be used with the appropriate descriptor to identify the Australian grown ingredients, 'Australian Grown Apples and Pears'.⁵¹

2.75 For the purposes of both of these claims, packaging materials are not treated as ingredients or components of the goods; and the weight of the packaging material is also disregarded when calculating the weight of the goods.⁵²

For the logo to be used in conjunction with 'Australian Seafood'

2.76 AMCL also administers a seafood-specific trademarked logo. The AMAG Code of Practice provides that the 'Australian Seafood' representation used in conjunction with the logo must be made in reference to an 'aquatic vertebrate or invertebrate intended for human consumption, but excluding amphibians, mammals and reptiles', and meet the requirements for 'Australian Grown' as specified above.⁵³

2.77 Any product displaying this logo would also need to satisfy the ACL requirements for the 'Grown in' descriptor.

For the logo to be used in conjunction with 'Australian Made'

2.78 Mirroring the ACL, the AMAG Code of Practice requires the use of the AMAG logo in conjunction with the representation 'Australian Made' to satisfy the following criteria:

- the good must be substantially transformed in Australia; and
- 50 per cent or more of the cost of manufacturing the food product must be attributable to production or manufacturing processes that occurred in Australia.⁵⁴

51 AMAG Code of Practice, July 2014, 18(d), p. 13.

52 AMAG Code of Practice, July 2014, p. 14.

53 AMAG Code of Practice, July 2014, 18(e), p. 13.

54 AMAG Code of Practice, July 2014, p. 8.

2.79 However, the AMAG Code of Practice applies a more restrictive test to ‘substantial transformation’ than provided under the ACL and in the associated ACCC guidelines.⁵⁵ AMCL has developed a list of processes that will not amount to substantial transformation to include:

- packaging or bottling;
- size reduction – cutting, dicing, grating, mincing;
- reconstituting;
- freezing, canning or simple preserving processes associated with packaging;
- mixing or blending of food ingredients, where the resulting product is not substantially different to the separate ingredients;
- juicing
- homogenisation
- pasteurisation;
- seasoning;
- marinating;
- coating or crumbing;
- pickling;
- dehydrating and drying;
- fermentation (e.g. in the production of wine, cider or salami);
- curing (e.g. the treatment of meat with curing salts, as in ham or bacon);
- roasting or toasting (e.g. of coffee beans, nuts or seeds).⁵⁶

Reconstituted products and the AMAG logo

2.80 The AMAG Code of Practice provides additional rules for the reconstituting of ingredients (that is, products ready for consumption that contain ingredients that have been dried or concentrated by the evaporation of water, to which water has been subsequently added).⁵⁷

2.81 The AMAG Code of Practice states that, in the case of reconstituted goods, the water used to reconstitute these ingredients must be included in the calculation of the ingoing weight of these ingredients:

Any water (whether of Australian origin or not) which is added to reconstitute an ingredient that is not of Australian origin is deemed to have the same origin as the foreign ingredient.⁵⁸

55 AMAG Code of Practice, July 2014, p. 8.

56 Australian Made Campaign Limited, *submission 18*, p. 8.

57 AMAG Code of Practice, July 2014, p. 14.

58 AMAG Code of Practice, July 2014, 18(d), pp. 14-15.

- 2.82 This is commonly referred to as ‘water neutrality’ because despite the origin of the water reconstituting that product, it is treated as having the same origin as the ingredient it is reconstituting.
- 2.83 The approach of AMAG’s Code of Practice here demonstrates a departure from the ACL and ACCC’s *Guide for business* as discussed above.

Compliance and enforcement

- 3.1 Chapter two of the report outlined how the two regulatory frameworks, the *Australia New Zealand Food Standards Code* (the Code) and the Australian Consumer Law (ACL), work in tandem to establish Australia's country of origin food labelling system. This chapter examines the rates of compliance with this system, and how it is enforced by regulators.
- 3.2 The Code is the product of negotiations between the Commonwealth, state and territory governments and the New Zealand Government. Similarly, the ACL is a model law that was negotiated through the Council of Australian Governments and has been subsequently implemented within each jurisdiction's consumer laws. Consequently, the enforcement of those two legal frameworks is the concurrent responsibility of federal as well as state and territory government agencies.
- 3.3 This chapter will first examine the compliance rates with the Code and the ACL, before discussing the enforcement options available to regulators at the state and federal levels.

Compliance

- 3.4 Regulators and government departments reported that compliance rates with the overall food labelling system are 'generally good'.¹ The Department of Industry reported:
- ... compliance and enforcement activity by consumer agencies has revealed minimal evidence of false or misleading claims in relation to [country of origin labelling] and minimal evidence of consumer

1 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 12.

detriment in the market in terms of false or misleading [country of origin labelling].²

- 3.5 Both the Australian Competition and Consumer Commission (ACCC) and the NSW Food Authority reported similar trends based on their compliance surveillance activities. The ACCC stated:

... we do not see large swathes of blatant conduct that we feel we are not taking on when we should. That is not the sense that we get from our complete analysis.³

- 3.6 According to the ACCC, a national survey undertaken in 2012 by the state regulators examined 245 products in respect of their country of origin labelling compliance. The ACCC was of the view that these products were specifically targeted by state regulators, and not randomly selected as there was 'some question' over their compliance with the ACL. Of those 245 products, 23 were identified as non-compliant with the ACL and were subsequently removed from sale. In addition, 25 traders were issued with substantiation notices of which three were then issued with infringement notices.⁴ More information on the enforcement activities of regulators is included later in this chapter.

- 3.7 Mr Peter Day, Director of Compliance, Investigation and Enforcement at the NSW Food Authority stated that the Authority regularly undertakes compliance surveys to determine whether there is a significant level of non-compliance. If there is, the Authority will:

... do further program work in that regard. Given the limitation on resources, it is a bit more of a filtering process to see how widespread the problem out there is.⁵

- 3.8 Mr Day also described the Authority's compliance surveillance activities:

We have a specialist enforcement unit that will do a variety of enforcement programs throughout the year. They are a team of about six people who operate fully into that program, based on market intelligence, previous issues that we have found, issues in the media and the like. So based on intelligence we will start a campaign where we will look for information to see whether it is substantiated in terms of noncompliance. Not all of their work is

2 Department of Industry, *submission 20*, p. 3.

3 Mr Scott Gregson, Group General Manager, Enforcement Group, Australian Competition and Consumer Commission, *Committee Hansard*, Canberra, 8 May 2014, p. 46.

4 Mr Nigel Ridgway, Group General Manager, Compliance and Product Safety, Australian Competition and Consumer Commission, *Committee Hansard*, Canberra, 8 May 2014, p. 46.

5 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 14.

around country-of-origin labelling, of course. But, given the sensitivity of the issue, probably about half of that work is involved in labelling work generally, of which country of origin is a component.⁶

- 3.9 This surveillance activity has led the Authority to focus further work on seafood, fruit and vegetable suppliers.⁷ However, the Authority did comment that some non-compliance has been caused by a lack of understanding amongst industry rather than ‘blatant’ deception or misleading conduct.⁸
- 3.10 Indeed, as a result of its annual audits, Mr Day reported that:
- ... although there is always a minority that will attempt to operate outside the law, the majority of noncompliance that the authority comes across more often reflects a lack of understanding about [labelling] provisions and/or lack of effective systems in that process rather than a deliberate attempt to mislead consumers.⁹
- 3.11 Simplot Australia also speculated that the complex and ‘unclear’ regulatory framework has caused industry confusion and ambiguity about what is required, and therefore has limited compliance.¹⁰
- 3.12 Similar comments were made by Australian Made Campaign Limited which submitted that many of their members are confused and uncertain as to what claims they should be making.¹¹ The Committee received further evidence of confusion amongst industry. This is addressed in greater detail in chapter four.

Enforcement

Activities at the state level

- 3.13 In NSW, penalties under the *Food Act 2003* (NSW) will range from on-the-spot fines up to court action which can impose financial penalties of up to \$250 000. Mr Day of the NSW Food Authority stated that they undertake

6 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 14.

7 NSW Food Authority, *submission 45*, p. 3.

8 NSW Food Authority, *submission 45*, p. 3.

9 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 12.

10 Simplot Australia Pty Ltd, *submission 17*, p. 2.

11 Australian Made Campaign Limited, *submission 18*, p. 10.

an escalation process or a graduated response to enforcement.¹² Mr Day explained:

We would have a pyramid where, obviously, the bulk is at the lower end – warning letters, advice information and education to businesses out there. But where needed, and where significant, we would issue on-the-spot fines or take prosecutions in significant cases.¹³

3.14 According to Mr Day, many cases of non-compliance are resolved through warnings, other minor penalties, warnings and education without the need for further enforcement action.¹⁴ Industry representatives have stated that this form of enforcement activity has been successful. For example, Citrus Australia – SA Region stated:

... recent fines imposed on retailers that were not labelling fresh fruit correctly is a very effective way to ensure compliance with labelling laws of fresh fruit.¹⁵

3.15 Mr Day stated that the majority of its compliance effort involves seafood suppliers or retailers. After a fairly sustained campaign between 2004 and 2007, over 70 penalty notices were issued to operators in the seafood sector. Mr Day commented however, that:

What that demonstrated is that sustained compliance action can actually result in better compliance overall in that performance, and we are seeing good compliance in that sector at the current time.¹⁶

3.16 Between 2004 and 2013, the Authority issued over 112 penalty notices for breaches of country of origin labelling requirements across a wide range of food commodities.¹⁷ In more serious cases, the Authority conducted 12 further prosecutions during this period which involved hundreds of charges involving more serious country of origin labelling or substitution offences.¹⁸ For example, the ‘most significant’ court action taken by the

12 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, pp. 14-15.

13 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, pp. 14-15.

14 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 12.

15 Citrus Australia – SA Region, *submission 28*, p. 2.

16 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 12.

17 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 12.

18 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 12.

Authority involved charges of misleading and deceptive conduct by a manufacturer for packaging and labelling imported bacon products as product of Australia.¹⁹ Many other prosecutions involved seafood operators.²⁰

- 3.17 The Authority regularly takes enforcement action in regards to the display of fresh produce without appropriate labelling as well as missing or incorrect labelling on packaged food.²¹ The Authority has also taken enforcement action where imported produce is displayed in close proximity to signage that implies Australian produce, such as ‘good for Aussie farmers’, or ‘supporting Aussie farmers’. In such cases, the consumer is led to believe at first glance that the product is Australian. Mr Day commented that ‘We are very strong on that. In that regard we do mirror the ACCC; they have taken similar action in that regard as well’.²² In the case brought by the Authority, the particular signage was found to be deceptive advertising and prohibited under the *Food Act 2003* (NSW).²³

Activities of the ACCC at the federal level

- 3.18 A large component of the enforcement activities of the ACCC is directed toward prevention of breaches by educating industry and consumers about their rights and obligations under the ACL. These efforts may take the form of publications, as well as speeches, presentations and submissions.²⁴
- 3.19 However, the ACCC has ‘actively enforced’ compliance with consumer law protections to address false, misleading or deceptive claims in relation to country of origin and place of origin.²⁵
- 3.20 Similar to the escalation process of the Authority described above, the ACCC has a range of enforcement actions it can commence in circumstances of non-compliance, including infringement notices, enforceable undertakings, and criminal proceedings.

19 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 12.

20 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 12.

21 NSW Food Authority, *submission 45*, p. 3.

22 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 15.

23 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 16.

24 Australian Competition and Consumer Commission, *submission 41*, p. 2.

25 Australian Competition and Consumer Commission, *submission 41*, p. 3.

- 3.21 Under the ACL, the ACCC is authorised to issue infringement notices with a financial penalty where it has reasonable grounds to believe that a person has contravened particular sections of the ACL. This includes the prohibition on false or misleading representations and the prohibition on misleading conduct. The penalties for most contraventions are \$102 000 for publically listed corporations, \$10 200 for bodies corporate and \$2 040 for individuals.²⁶ These penalty amounts are for each individual contravention, and the ACCC is authorised to issue more than one infringement notice for each distinct contravention.²⁷
- 3.22 The ACCC may also choose to settle the matter administratively with the particular business or individual by accepting formal, court enforceable undertakings under section 87B of the ACL. Such arrangements are often referred to as ‘section 87B undertakings’ and might include one or more of the following:
- compensating consumers who suffered from the conduct;
 - running corrective advertisements of similar frequency and prominence to those that misled consumers;
 - paying for a company or industry trade practices compliance program; and
 - making administrative changes within the business to reduce the risk of future misleading conduct.²⁸
- 3.23 For serious cases of non-compliance, the ACCC is enabled to commence criminal proceedings under the ACL. If a business or individual is found to have breached a provision of the ACL, the court may impose any of the following penalties or remedies:
- monetary penalties of up to \$1.1 million for companies and up to \$220 000 for individuals;
 - injunctions to prevent the prohibited conduct continuing or being repeated or to require that some action be taken;
 - adverse publicity orders; or
 - probation orders, community service orders and corrective advertising orders.²⁹

26 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014. Available at <www.accc.gov.au/system/files/Country%20of%20origin%20and%20the%20Australian%20Consumer%20Law.pdf> accessed 1 September 2014, p. 24.

27 Mr Scott Gregson, Group General Manager, Enforcement Group, Australian Competition and Consumer Commission, *Committee Hansard*, Canberra, 8 May 2014, pp. 44-45.

28 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 24.

29 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014, p. 24.

- 3.24 Mr Scott Gregson, Group General Manager, Enforcement Group at the ACCC described how the ACCC will employ these three different enforcement activities:

We have a number of tools available to deal with the formal resolution of matters ... section 87B undertakings, infringement notices and going to court for other remedies including pecuniary penalties. Which of those tools we use might be influenced by a number of factors. We will have regard to the seriousness of the conduct, and the most serious we pursue to court. We might have regard to the size of the company. So if there is a small company, in the first instance, absent of other factors we might seek to resolve it through an enforceable undertaking. The difference between an enforceable undertaking and an infringement notice is that, if we want further remedies, a big part of the reason we take on conduct is not just to deal with a previous instance but to ensure future compliance. We may want a compliance program. We may want to deal with corrective notices. You cannot deal with that through an infringement notice only. So you might get an 87B either separately or in addition.³⁰

- 3.25 Mr Gregson stated that, in most cases, enforcement and compliance actions brought by the ACCC are resolved by consent.³¹

Examples of enforcement action taken by the ACCC

- 3.26 Between 2009 and 2014, the ACCC commenced 20 country of origin enforcement actions covering a wide range of products generally, of which ten specifically involved food products. The ACCC provided details about some of the more recent matters including action commenced against Coles Supermarkets where six separate infringement notices were paid totalling \$61 200 for alleged misleading representations about the country of origin of fresh produce made in five of its stores between March 2013 and May 2013.³²
- 3.27 The ACCC has also taken action where by reason of a trading name and logo, in this case, Kingisland Meatworks & Cellars Pty Ltd, as it falsely represented that it entirely or substantially supplied meat grown or raised on King Island when this was not the case. The proprietor faced a \$50 000

30 Mr Scott Gregson, Group General Manager, Enforcement Group, Australian Competition and Consumer Commission, *Committee Hansard*, Canberra, 8 May 2014, pp. 44-45.

31 Mr Scott Gregson, Group General Manager, Enforcement Group, Australian Competition and Consumer Commission, *Committee Hansard*, Canberra, 8 May 2014, pp. 46-47.

32 Australian Competition and Consumer Commission, *submission 41*, p. 3.

penalty and a three year injunction.³³ Actions have also been taken against Aldi Foods Pty Ltd and Spring Gully Foods Pty Ltd in July 2011 for the sale of honey that was falsely labelled 'produced' or 'made with honey produced' on Kangaroo Island, when this was not the case.³⁴

- 3.28 The ACCC has also taken enforcement action against a business where it used the Australian Made, Australian Grown logo without authorisation (see chapter two for more information on the regulation and use of the logo). However, it is worth noting that in this instance, the particular product was not a food product.³⁵

Resource issues with enforcement activity

- 3.29 Enforcing the country of origin labelling framework was described during the inquiry as a 'resource intensive' operation. For example, Mr Day from the NSW Food Authority commented that:

... while the authority actively enforces country of origin requirements, these can be resource intensive operations and they need to be carefully prioritised against overarching food safety priorities in terms of resource allocation. Accordingly, the authority notes that the emphasis given to country of origin compliance does vary between food regulatory jurisdictions.³⁶

- 3.30 The ACCC echoed these concerns. Mr Gregson from the ACCC stated:

In terms of prioritising our work ... we receive about 160 000 contacts a year in relation to all matters. At the end of the day, through various investigative processes, we may institute proceedings in around 30 matters. That is across our full range of enforcement work.

We use our compliance enforcement policy to seek to prioritise. It does that in two ways. The first is actually setting out what areas we are going to focus on in a particular area in a year. ... Credence claims, which would include country of origin, have been a priority for the last two years ... We seek to maximise our impact by taking on those who are either blatant or who impact on a large number of consumers, but also ones that might make a difference

33 Australian Competition and Consumer Commission, *submission 41*, p. 12.

34 Australian Competition and Consumer Commission, *submission 41*, pp. 4, 13.

35 Australian Competition and Consumer Commission, *submission 41*, p. 3.

36 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 12.

in providing deterrence. That could be because they set out new areas of focus for us.³⁷

3.31 Mr Gregson further commented that regulators have limited resources, which need to be directed in the most meaningful way:

There is no doubt that with a larger organisation we would be up to follow-up on further matters and potentially take more action ... We set our priorities because we do have limited resources.³⁸

37 Mr Scott Gregson, Group General Manager, Enforcement Group, Australian Competition and Consumer Commission, *Committee Hansard*, Canberra, 8 May 2014, p. 44.

38 Mr Scott Gregson, Group General Manager, Enforcement Group, Australian Competition and Consumer Commission, *Committee Hansard*, Canberra, 8 May 2014, p. 46.

Consumer and industry perspectives

- 4.1 This chapter of the report explores issues and concerns raised during the inquiry that impact on consumers and industry.

Consumer issues

- 4.2 This section of the chapter examines country of origin labelling issues from a consumer perspective, including the priority placed by consumers on country of origin and how consumers use labelling as a proxy or substitute for product safety. Consumer confusion has been a significant issue throughout the inquiry and is discussed in this chapter, with reference to the use of the 'local and imported ingredients' label and the use and misuse of symbols on product packaging.

Country of origin as a priority for consumers

- 4.3 Evidence to the inquiry indicated that there are significant issues for consumers concerning country of origin food labelling. The Australian Made Campaign Limited (AMCL) stated that Australian consumers are becoming increasingly concerned about the origins of the food they eat, and that those concerns are driven by economic, health and safety, ethical and environmental factors.¹
- 4.4 CHOICE believes consumers have the right to make informed decisions about where the food they buy comes from. CHOICE believes the lack of clarity in country of origin labelling prevents the making of informed decisions, which is detrimental to consumers.² CHOICE provided

1 Australian Made Campaign Limited, *submission 18*, p. 1.

2 CHOICE, *submission 47*, p. 6.

significant information on consumer needs, with many submissions referring to CHOICE research on the matter.

- 4.5 CHOICE's submission stated that its surveys consistently show that country of origin food labelling is a priority concern for Australian consumers:

... improved country of origin labelling was the number one issue for respondents in CHOICE's 2013 Pre-Election Survey. And when it comes to the value consumers place on different aspects of food labelling, [country of origin labelling] is very important and second only to the actual ingredients contained in the food.³

- 4.6 AMCL described some of the reasons consumers are concerned about the origins of the food they eat:

... many consumers recognise the quality, freshness and high standards of Australian grown produce and the social and economic benefits of supporting the Australian economy and the country's farmers and fishermen by buying locally produced products whenever possible.⁴

- 4.7 A 2012 CHOICE member survey on country of origin food labelling found that, for the vast majority of respondents, it is very important to be able to identify Australian food, and that knowing where food is manufactured is almost as vital as knowing where it is grown:

- 84 per cent of respondents said it was either crucial or very important to know if food was grown in Australia; and
- 80 per cent said it was crucial or very important to know if food was manufactured in Australia.⁵

- 4.8 Mr Steve Mickan, Sales Director at SPC Ardmona, also claimed that Australians are concerned about where food comes from, citing recent surveys and research which indicate a growing interest in concern about country of origin:

Most people and consumers want to know where their food was grown and manufactured. There is a global consumer trend towards understanding provenance and Australia is following this trend. Consumers are becoming increasingly concerned about food safety, quality standards, ethical sourcing and sustainability issues in relation to the food they consume.⁶

3 CHOICE, *submission 47*, p. 5.

4 Australian Made Campaign Limited, *submission 18*, p. 3.

5 CHOICE, *submission 47*, p. 5.

6 Mr Steve Mickan, Sales Director, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 7.

4.9 However, some evidence to the inquiry indicated that country of origin information may be less important for consumers, particularly with regard to highly processed products. Mr Timothy Piper, Director (Victoria) of the Australian Industry Group (AIG) explained, based on research and anecdotal evidence, country of origin labelling is fourth or fifth in terms of purchasing patterns,⁷ and cited factors that influence customer choices:

We believe consumers feel country of origin of the ingredients is most important for fresh food and the place of manufacture is the most important factor for 'Made in Australia' – much more so than the ingredients themselves. Country of origin on manufactured products is not the key consumer purchase driver compared to price, quality, habit and brand loyalty.⁸

4.10 CHOICE stated that there is strong interest in knowing whether food is made or grown in Australia, although that doesn't always translate into purchasing behaviour. CHOICE's 2012 survey reflected this, with the majority of respondents saying they try to buy Australian food, however decisions depend on other factors such as type of food and price.⁹ However, CHOICE believes that the current state of labelling is so poor that consumers are often unable to factor origin into their purchasing behaviour.¹⁰

4.11 Mrs Shalini Valecha, Strategy Manager, SPC Ardmona discussed the variation in the intentions of consumers, and discussed the 'dynamism' in a consumer's approach:

Consumers are quite savvy and there is no one factor in the purchasing hierarchy that stays static. The hierarchy is dynamic. It will change with ethical sourcing, with food safety and with various factors. Every time you go to a shop you are not necessarily following the hierarchy that 'I will judge by price, then by this, and then by this'.¹¹

4.12 Mrs Valecha explained that labelling laws need to be able to give that information on a range of factors, to assist the consumer in making decisions:

7 Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, p. 36.

8 Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, pp. 33-34.

9 CHOICE, *submission 47*, p. 5.

10 CHOICE, *submission 47*, p. 5.

11 Mrs Shalini Valecha, Strategy Manager, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 9.

One of those factors is country of origin, and sometimes that country of origin decision is about food ingredients and sometimes about saving jobs – that feeling of, ‘I just want to back my region and I want to go for that product’.¹²

Country of origin as a proxy for safety and other issues

4.13 Many submissions to the inquiry stated that consumers use country of origin information as a proxy for product quality, safety, for environmental reasons and in considering work force labour issues. There is a distinct preference for Australian produce as it is considered of a higher standard across these areas.

4.14 The Australian Manufacturing Workers Union (AMWU) explained the value of the high quality of Australian food, produce standards and rigorous food testing regime:

... [this] is one of our greatest competitive advantages, both domestically and internationally ... Due to the high reputation of Australian food quality, both domestic and international consumers use country of origin labelling as a surrogate for food safety and health information.¹³

4.15 Fruit grower Mr Bart Brighenti also summarised the situation, referring to lower standards of imported products:

Every country has different levels of food standards imposed on their manufacturers as well as levels of enforcement applied. Imports into Australia currently do not need to meet the same level of regulation as local producers when it comes to food safety, chemical use, labour pay, OH&S and environmental protection.¹⁴

4.16 Mr Mickan of SPC Ardmona also discussed higher safety standards in Australia compared to other countries, emphasising Australia’s clean, green, safe reputation:

... Australia has some of the most stringent food growing and manufacturing standards in the world. Many other countries that export food to Australia are not required to adhere to the same strict standards. The strong food safety reputation for products

12 Mrs Shalini Valecha, Strategy Manager, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 9.

13 Australian Manufacturing Workers Union, *submission 22*, p. 1.

14 Mr Bart Brighenti, *submission 37*, p. 1.

grown and manufactured in Australia has become a key indicator for safe food for shoppers and consumers.¹⁵

- 4.17 Ms Amanda Rishworth MP discussed her constituents' desire for country of origin information so that they may make informed decisions. Ms Rishworth referred to higher level of consumer confidence in Australian farming practices, as well as the desire to support local farmers.¹⁶
- 4.18 Mr Stephen Gately of Buy Australian Made discussed health, environment and workforce issues, including the cost to farmers to retain a 'green and clean' image, where other countries may not have the same standards and regulations:
- ... There is significant concern about the use of banned chemicals and lack of legislation and enforcement relating to produce grown and processed in some countries. Poor working conditions and employee entitlements in some offshore farms and processing plants are also a factor for some people when they are making a purchasing decision.¹⁷
- 4.19 Mr Richard Mulcahy, Chief Executive Officer of AUSVEG suggested that consumers may not know the conditions under which some imported products are made:
- A lot of consumers are apprehensive, given some of the stories that have come out of Asia about products they are ingesting not being from Australia. We are not saying ban the foreign produce but we are saying make it very clear so that if I want to go to a supermarket and buy food that I feel comfortable that it is produced under good Australian conditions. We ought to be able to identify that. It is very, very difficult in many products.¹⁸
- 4.20 Mr Bart Brighenti discussed the level of detail required of growers for fruit production and distribution in Australia:
- As a farmer, packer and marketer I am required by my local and international buyers to have each carton labelled to be able to identify the individual weight, variety, class, size and pack date. I am also required to be able to identify from each box the individual grower the fruit comes from, the paddock it was grown and keep a copy of the farmer's chemical records. If I have to do all

15 Mr Steve Mickan, Sales Director, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 7.

16 Ms Amanda Rishworth MP, *submission 32*, p. 1.

17 Mr Stephen Gately, *submission 24*, p. 2.

18 Mr Richard Mulcahy, Chief Executive Officer, AUSVEG, *Committee Hansard*, Sydney, 9 May 2014, p. 5.

this, then the processors further along the chain have all the information needed to do the same.¹⁹

Consumer confusion

- 4.21 A substantial amount of evidence to the inquiry claimed that consumers are confused about the existing country of origin labelling system. The Committee notes claims made by the Australian Food and Grocery Council that confusion is not a significant issue. The Council referred to a review they conducted, where five major food and grocery manufacturer customers' call centre logs over a one year period showed that:
- ... out of nearly a quarter of a million consumer initiated contacts, 0.39 per cent were about origin – less than half of one percent. Claims that consumers are generally confused and demanding change on country of origin labelling must be tested against these facts.²⁰
- 4.22 The Committee received overwhelming evidence from inquiry participants, however, which demonstrated that consumers experience considerable confusion interpreting country of origin labelling information in order to make informed decisions.
- 4.23 The Australian Competition and Consumer Commission (ACCC) *Country of origin claims and the Australian Consumer Law – A guide for business* stated that the most common complaints about country of origin claims are that the claims are unclear.²¹ CHOICE's research has shown that consumers have considerable difficulty interpreting common country of origin claims:
- ... our 2012 survey ... respondents had very varied interpretations of these claims. The most concerning finding was that a third of respondents incorrectly believed that a 'Made in Australia' claim meant the ingredients are Australian (when in fact the claim is about the location of manufacturing).²²
- 4.24 CHOICE suggested that country of origin claims are often vague and confusing, further citing its 2012 survey which found that:
- around half of respondents said there was enough information about the origin of the food they buy;

19 Mr Bart Brighenti, *submission 37*, p. 2.

20 Australian Food and Grocery Council, *submission 35*, p. 7.

21 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

22 CHOICE, *submission 47*, p. 6.

- while just 10 per cent said information about food origin was clear and easy to understand.²³

4.25 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, also referred to market research surveys, showing a considerable level of confusion in food labelling, and 'Made in Australia' labels with either 'imported or local' or 'local and imported' ingredients:

The last survey that I saw that said that only approximately 25 per cent of consumers had a good understanding of 'Product of Australia' and what that means in the context of food. We want to provide accurate and easy information for consumers.²⁴

4.26 Mr Piper of AIG outlined the key country of origin claims currently being used:

Under the current system, the main claims used in the confectionery manufacture in Australia are, but not limited to, 'Made in Australia' or 'Australian made' or 'Made in Australia from local and imported ingredients' or vice versa. There is also, but to a lesser extent 'Product of Australia'; or it might even be 'Made in the US' for a particular company; it might be 'Packed in Australia' with units made in Australia or New Zealand from locally or imported ingredients; it might have 'Made in Holland, packed in Australia'; 'Packed in Australia from imported and local ingredients'. There is a myriad of options that are being used.²⁵

4.27 Mr Daniel Presser, Executive Chairman, Sabrands Pty Ltd, suggested that consumer confusion is a major issue, and that consumers have the right to know where the food they eat actually comes from.²⁶

4.28 Safcol Australia and Apple and Pear Australia Limited (APAL), among many other inquiry participants, referred to current labelling rules as misleading. Safcol Australia described them as being 'open to misuse by organisations in the way they interpret them'²⁷, and APAL described how 'Made in Australia' can actually mean that all the ingredients are imported and simply mixed or packaged in Australia.²⁸

23 CHOICE, *submission 47*, p. 5.

24 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 21.

25 Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, p. 33.

26 Mr Daniel Presser, Executive Chairman, Sabrands Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 41.

27 Safcol Australia Pty Ltd, *submission 53*, p. 1.

28 Apple and Pear Australia Limited, *submission 23*, p. 1.

- 4.29 Mr Paul Trotman, Acting Division Head, Business Competitiveness and Trade, Department of Industry, commented on confusion between key claims:

For consumers, a lot of the time they may not see any difference between 'product of' and 'made in'. They are just happy to know that the product is Australian when they are making a particular purchase'.²⁹

- 4.30 Mr Stewart Davey (Manager, Regulatory Affairs, Dairy Australia) of the Australian Dairy Industry Council also discussed the confusion between the two key country of origin claims, 'Product of Australia' and 'Made in Australia', noting that very few consumers might understand the difference, and see them as interchangeable:

... Within the dairy context, however, I do not think that then drives any change in consumer behaviour - because they would view either one of them as giving them sufficient information about whether the product was of Australian origin or not.³⁰

Consumer research and surveys

- 4.31 CHOICE conducted research into the type of food products for which consumers most value origin information. CHOICE's 2012 survey asked consumers about the importance of origin information for a range of product types, and shows that origin becomes less important as food types become more heavily processed:

- More than two-thirds of respondents said country of origin is crucial for fresh meat, seafood and fresh fruit vegetables;
- Half or more of respondents said country of origin is crucial for dairy products and processed meat products;
- For juice, over 40 per cent of respondents said country of origin is crucial;
- Over a quarter said country of origin is crucial for bread, cereal and pasta, and canned and frozen food; and
- 17 per cent said country of origin was crucial for snack foods, and the percentage was even lower for soft drinks at 15 per cent and just 13 per cent for confectionery and chocolate.³¹

- 4.32 The AMCL submission also discussed its research into consumer preferences, finding that 87 per cent of respondents indicated a strong
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29 Mr Paul Trotman, Acting Division Head, Business Competitiveness and Trade Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 5.

30 Mr Stewart Davey (Manager, Regulatory Affairs, Dairy Australia), Australian Dairy Industry Council, *Committee Hansard*, Melbourne, 20 June 2014, p. 29.

31 CHOICE, *submission 47*, p. 8.

preference for Australian made or grown food products. The research noted that preference for Australian made products had increased by 8 per cent while it had declined in other categories.³²

- 4.33 The Department of Industry stated that the next Australian Consumer Survey, jointly commissioned by the Commonwealth, states and territories, will assess consumer and industry views as to the effectiveness of Australia's country of origin labelling framework.³³ Mr Ben Dolman, Principal Adviser, Small Business, Competition and Consumer Policy, Treasury explained that the last survey was undertaken in 2010 and involved talking to more than 5 000 consumers, and that in 2012, consumers affairs ministers agreed that the 2015 survey would look into consumer awareness of and responsiveness to country of origin labelling.³⁴

Recognition of the 'Australia brand'

- 4.34 Consumers may be using other label information as a proxy for country of origin. Labels such as 'proudly Australian' or 'Australian owned' may lead to consumers believing that the origin of the foods contained in that product is Australian.
- 4.35 Mrs Valecha of SPC Ardmona elaborated on her opinion that the 'Australian owned' label does not have significant meaning to consumers:

You could set up a shop here, import stuff and call it 'Australian owned'. As a consumer, it really does not mean anything for a purchasing decision. The identifiers have to go with food that you are consuming, so food grown, and where it is manufactured. What is relevant to the consumer is a mix and combination of that information. How we slice it and dice it and what spectrum we want to have within this is, of course, vital when our industry is at stake here. At this stage, the way it sits you could have a label of 'Australian owned' at the front, but have 'Product of Thailand' at the back and you still do not know what is going on.³⁵

32 Australian Made Campaign Limited, *submission 18*, p. 3.

33 Department of Industry, *submission 20*, p. 2.

34 Mr Ben Dolman, Principal Adviser, Small Business, Competition and Consumer Policy, Treasury, *Committee Hansard*, Canberra, 8 May 2014, p. 8.

35 Mrs Shalini Valecha, Strategy Manager, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 9.

- 4.36 Mr Tom Hale, Acting National Divisional Secretary, Food & Confectionery Division, AMWU, suggested that consumers cannot reliably assume that particular well known Australian brands use only Australian ingredients:

As a consumer, I can find it very difficult. It is difficult in that you tend to use brand recognition as being an indicator of the country of origin but, with the number of multinational corporations involved, that is not reliable. Also, with supermarkets and their private labels, it may well be beetroot that is grown in Australia this week, and next week it might be beetroot that is grown somewhere else. If you are only relying on the label or the brand then that is a fairly unreliable way of trying to distinguish.³⁶

- 4.37 Mr Bill Bowron provided an example of a label that could cause confusion; he explains:

The Goulburn Valley is one of Australia's prominent agricultural areas in Victoria. The sight of the attached label on a bottle of juice in a shop or supermarket fridge would make one immediately think one was purchasing an Australian product, and in doing so, supporting Australian farmers and protecting local jobs ...

Now I imagine these labelling arrangements are within Australia's trade mark laws, but one could readily think they might be deceptive – a deliberate attempt to link a food product made from imported ingredients with a well-known Australian food producing area, in order to have the unsuspecting public, moving quickly through food outlets, purchase the product as though it were from Australian farms.³⁷

- 4.38 The Committee is aware that identifying brands and their contents with accuracy is even more challenging for consumers making online purchases as the product labels cannot be scrutinised. Mr Mickan from SPC Ardmona explained that approximately one third of their production volume would be for food service and online channels, and the purchaser of those products typically buys from a catalogue or an online portal 'where the country of origin is even more separated from the package'.³⁸

36 Mr Tom Hale, Acting National Divisional Secretary, Food & Confectionery Division, AMWU, *Committee Hansard*, Melbourne, 20 June 2014, p. 3.

37 Mr Bill Bowron, *submission 1*, p. 1.

38 Mr Steve Mickan, Sales Director, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 7.

The 'local and imported ingredients' tag

4.39 There was considerable comment from submitters regarding the somewhat vague, cover-all label of 'made in Australia from local and imported ingredients'. CHOICE suggested that the qualified 'Made in Australia from local and imported ingredients' type of claim is a serious problem:

While we don't have quantitative research on this point, anecdotally we find this is to be the greatest frustration for consumers when it comes to [country of origin labelling]. These claims are vague and provide no information about which ingredients are Australian or where the imported ingredients are from. In CHOICE's view, this type of claim does not provide more valuable information than the unqualified 'Made in Australia' claim.³⁹

4.40 The AMWU stated that 'Made in Australia from local and imported ingredients' provides no substantial information about where the ingredients come from, leaving the labels completely unsatisfactory from a consumer point of view.⁴⁰

4.41 Mrs Valecha of SPC Ardmona explained how the 'local and imported' tag is not helpful, suggesting that it does not give any additional information to a consumer to make a decision.⁴¹ Ms Amanda Rishworth MP commented that labels such as 'made in Australia from local and imported ingredients' cause significant confusion because:

... there is no way to determine the proportion or part of the product that is made from Australian ingredients or the proportion or part that is made from imported ingredients. Further, there is no way to determine from which country the imported ingredients originate.⁴²

4.42 Mr Trevor Weatherhead, Executive Director of the Australian Honey Bee Industry Council, also commented on the ambiguous 'local and imported' label, referring to the percentage of each:

At the current time there is no legislation that says you must say how much is Australian and how much is imported. The Australian could be five per cent and the imported could be 95 per

39 CHOICE, *submission 47*, p. 6.

40 Australian Manufacturing Workers Union, *submission 22*, p. 2.

41 Mrs Shalini Valecha, Strategy Manager, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 8.

42 Ms Amanda Rishworth MP, *submission 32*, p. 1.

cent or it could be the other way around – it could be 95 per cent Australian and only five per cent imported.⁴³

- 4.43 Mr Presser of Sabrands Pty Ltd discussed the consumers' right to know where ingredients are from:

I think the terms 'imported' and 'Made from imported ingredients' do not give the consumer their right to know. I would like to know, for the product I was ingesting, if the raw materials came from some factory in China or some factory in the US or some factory somewhere else.⁴⁴

- 4.44 Other submitters also discussed the ambiguity of the 'local and imported' label. Mr Philip Harrison stated:

Many packaged goods have labels such as 'Made in Australia from local and imported ingredients'. Nowhere does it say which part comes from Australia and which from overseas. Frozen crumbed fish have this notation on them. Are the fish Australian and the breadcrumbs imported? Or vice versa? Who knows.⁴⁵

- 4.45 Mr Bruce Collins referred to a packet of dried fruit, labelled 'Packed in Australia from local and imported ingredients', but also listing Australian grown sultanas, raisins & currants; 'so we know country of origin of the basic ingredients, which, we believe, is what consumers want to know'.⁴⁶ Mr Collins also referred to a jar of peanut butter with ambiguous product description:

This [jar of peanut butter] says 'Made in Australia from imported and local ingredients.' It also says 85 per cent peanuts on ingredients list. Does this mean that all the peanuts were grown in Australia, or that there is a mix of Australian and imported peanuts? If so, how do we know what proportion and which country?⁴⁷

- 4.46 CHOICE's submission expressed concern that many companies may be using the 'local and imported ingredients' type of claim to water down the requirements of the strict 'Made in Australia' claim:

... because until recently, the ACCC's industry guidance stated that companies unable to meet the requirements of the 'Made in

43 Mr Trevor Weatherhead, Executive Director, Australian Honey Bee Industry Council, *Committee Hansard*, Brisbane, 3 July 2014, p. 4.

44 Mr Daniel Presser, Executive Chairman, Sabrands Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 41.

45 Mr Philip Harrison, *submission 3*, p. 1.

46 Mr Bruce Collins, *submission 9*, p. 2.

47 Mr Bruce Collins, *submission 9*, p. 2.

Australia' claim could make a qualified claim like 'Made in Australia from local and imported ingredients'. We note that in a recently released updated version of *Country of origin claims and the Australian Consumer Law*, the ACCC has left out this statement. However, we are concerned that it will take time for this interpretation to be absorbed by companies and labelling updated accordingly, and in the meantime consumers may be misled by companies relying on the old interpretation.⁴⁸

- 4.47 AMCL also stated that the major area of consumer concern continues to be the 'Made in ...' claim and related qualified claims, such as 'Made in Australia from local and imported ingredients':

The 'Made in ...' claim, as currently defined in the ACL and consequently the Food Standards Code, relates to manufacturing processes and costs of production, rather than to content. A food product which contains a high percentage of imported ingredients can still legally be described as 'Made in Australia', provided it meets the twin criteria of 'substantial transformation' in Australia and 50 per cent of costs incurred locally.⁴⁹

- 4.48 AMCL added that consumers are understandably concerned about the origin of the major ingredients in processed foods, with research indicating consumers are seeking (and not finding) this information as part of their purchasing decision.⁵⁰

- 4.49 AMCL further discussed the qualified 'made in ...' claim suggesting that it provokes more consumer outrage than any other claim:

This may be because it draws attention to the presence of imported content in a way that the other claim does not and at the same time provides no indication of either the scale or source of that imported content.⁵¹

- 4.50 AMCL discussed the ACCC's country of origin guidelines of 2006 and 2011 which were considered unhelpful:

... where a company was unable to make an unqualified claim for their product, such as 'Made in Australia', they may make a qualified claim and such qualified claims do not have to meet the substantial transformation or 50 per cent content tests.⁵²

- 4.51 AMCL added that the ACCC updated its guidelines this year:
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48 CHOICE, *submission 47*, p. 6.

49 Australian Made Campaign Limited, *submission 18*, p. 5.

50 Australian Made Campaign Limited, *submission 18*, p. 5.

51 Australian Made Campaign Limited, *submission 18*, p. 7.

52 Australian Made Campaign Limited, *submission 18*, p. 7.

New guidelines released by the ACCC on 15 April [2014] no longer include such statements, stating instead only that such claims should not be false or misleading. Unfortunately the damage has been done in terms of consumer confidence.⁵³

4.52 AMCL stated its views on the use of the 'Made in Australia' term:

... where an unqualified 'Made in Australia' claim cannot be supported, any qualified claim made should not include the words 'Made in Australia'. The current practice is illogical and confusing for both consumers and manufacturers. The words 'Made in Australia' or 'Australian Made' should be reserved exclusively for products which can meet the tests set out in the legislation.⁵⁴

4.53 The ACCC's *Guide for business* states that a 'Made in Australia from local and imported ingredients' claim must not be misleading, and that the provision of extra information beyond 'Made in Australia' should clarify the origin of the components and not confuse consumers.⁵⁵

The use and misuse of symbols

4.54 The rules for use of symbols were discussed in chapter two. The Committee notes extensive evidence from inquiry participants which indicates that the use of iconic Australian images or symbols is misleading and confusing for consumers.

4.55 Mr Mickan of SPC Ardmona described the false impression given to consumers that a product is Australian, when in fact it is not, and the consumer's perception of the use of Australian icons and images:

If you see a picture of a koala on something, I think the average person could be forgiven for believing it might have something to do with Australia.⁵⁶

4.56 Mr Elder of Simplot Australia also discussed potentially misleading imagery on packaging, describing the use of a picture of a koala as misleading if the product is not Australian.⁵⁷

53 Australian Made Campaign Limited, *submission 18*, p. 7.

54 Australian Made Campaign Limited, *submission 18*, p. 7.

55 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

56 Mr Steve Mickan, Sales Director, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 11.

57 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 26.

- 4.57 Mr Mulcahy of AUSVEG commented on consumers' misconceptions of labels and packaging:

I remember my late mother ringing me one night, saying, 'I always buy Australian if it has got a picture of a farmer on the front' – I think it almost had the Akubra hat. I got her to get it out of the deep freezer – she had failing vision, and I said, 'Look at the back and lift up the flap'. She said, 'Oh, it's from Belgium' ... People are in some cases being misled. I do not think it is an accident.⁵⁸

- 4.58 AUSBUY claimed that the Australian flag is used liberally to infer a product is Australian even if it is fully imported and foreign owned.⁵⁹ Dr Maria Lesseur Sichel, Corporate Quality Manager, Simplot Australia, also questioned the use of the Australian flag on product packaging:

I think it is actually very common to see the flag right now in things that are then made in Australia from local and imported. By law, it is fine. They are not in breach in any way, but they are using the flag more and more, I think, and it is usually the case that it is mainly from Australia, but is that enough to put an Australian flag on it?⁶⁰

Committee comment

- 4.59 The Committee recognises that there is a great deal of confusion with the country of origin labelling system for both consumers and industry. There appear to be some substantial problems, particularly with consumers and the perceived meanings of fundamental terms such as 'made in Australia'.
- 4.60 The Committee agrees that country of origin labelling must be absolutely clear for both industry and consumers.
- 4.61 The Committee looks forward to the next Australian Consumer Survey and trusts that the outcomes will feed into further improvements of the country of origin labelling system.

Industry issues

- 4.62 This section of the chapter examines country of origin labelling issues from an industry perspective, and presents several sector case studies. The

58 Mr Richard Mulcahy, Chief Executive Officer, AUSVEG, *Committee Hansard*, Sydney, 9 May 2014, p. 5.

59 AUSBUY, *submission 13*, p. 16.

60 Dr Maria Lesseur Sichel, Corporate Quality Manager, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 26.

seafood case study discusses unique arrangements in the Northern Territory.

- 4.63 The section examines the issue of water neutrality in food production and manufacturing, and seasonality and its impact on manufacturing including issues relevant to labelling and packaging.

Flexibility and confusion?

- 4.64 The Department of Industry explained that the current country of origin labelling framework is sufficiently flexible to enable any country of origin representation to be made, so long as it not false, misleading or deceptive, and observed that suppliers can highlight the origin of any of the ingredients of their food:

... if they believe this is necessary to distinguish them from food made locally from ingredients imported from elsewhere, and they can do so without being false, misleading or deceptive, as demonstrated by compliance with one of the 'safe harbours' (e.g. ingredients 'grown in {country}') or by some other means.⁶¹

- 4.65 As an example, a supplier may claim bacon is 'Made in Australia from Australian pork', or an apple pie is 'Made in Australia from Australian apples' if such statements are true and would not mislead or deceive the ordinary consumer.⁶²

- 4.66 The Department of Industry discussed the perceived double meaning of the 'Australian Made' label:

Some within the industry believe it is difficult to differentiate between a product made in Australia from a significant ingredient sourced in Australia and a similar product made in Australia from the same ingredient sourced overseas. This is because the expression 'Australian Made' can legitimately cover both products if the imported ingredient has been substantially transformed in Australia and the value of Australian content is at least 50 per cent of the total production cost.⁶³

- 4.67 The existing country of origin labelling system was described as robust and workable by Dr Peter Stahle (Executive Director, Australian Dairy Products Federation) of the Australian Dairy Industry Council, although

61 Department of Industry, *submission 20.1*, p. 5.

62 Department of Industry, *submission 20.1*, p. 5.

63 Department of Industry, *submission 20.1*, p. 4.

not perfect. Dr Stahle also described it as cost effective for both industry and consumers.⁶⁴

- 4.68 Dr Stahle further discussed the need for the system to be flexible, and stated that flexibility is an integral part of ensuring that the system works from industry and consumer perspectives:

If [arrangements] become absolute and definitive, that presents all sorts of problems in terms of demonstrating compliance, particularly with regard to the ACCC and their expectations of what can and cannot be prosecuted.⁶⁵

- 4.69 However, Dr Stahle did admit that as long as there is that flexibility in the system, there will always be the opportunity for consumers to be uncertain.⁶⁶

Catering and point of sale labelling

- 4.70 As noted earlier, Standard 1.2.11 of the Code does not apply to food offered for immediate consumption where the food is sold by restaurants, canteens, schools, caterers, self-catering institutions, prisons, hospitals or other similar institutions e.g. nursing homes.⁶⁷

- 4.71 Mr Mickan of SPC Ardmona explained that the food service market is also heavily contested and imported products play a significant role.⁶⁸ The National Seafood Industry Alliance suggested that the omission of country of origin labelling in the restaurant and food service sector can be deceptive for consumers.⁶⁹ SPC Ardmona outlined the importance of the \$45 billion food service market and the need for it to be able to inform consumers:

Clear country of origin labelling is just as important in this [food service] market as it is in retail. Private business and government institutions that cater to the public must have a clear understanding of the country of origin of products that they serve.⁷⁰

64 Dr Peter Stahle (Executive Director, Australian Dairy Products Federation), Australian Dairy Industry Council, *Committee Hansard*, Melbourne, 20 June 2014, p. 29.

65 Dr Peter Stahle (Executive Director, Australian Dairy Products Federation), Australian Dairy Industry Council, *Committee Hansard*, Melbourne, 20 June 2014, p. 28.

66 Dr Peter Stahle (Executive Director, Australian Dairy Products Federation), Australian Dairy Industry Council, *Committee Hansard*, Melbourne, 20 June 2014, p. 29.

67 Food Standards Australia New Zealand, *submission 12*, p. 2.

68 Mr Steve Mickan, Sales Director, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 10.

69 National Seafood Industry Alliance, *submission 31*, p. 6.

70 SPC Ardmona, *submission 46*, p. 3.

4.72 Fruit grower Mr Bart Brighenti stated that restaurants and cafés should also be made to display country of origin, as an increasing percentage of consumers are eating out and still have the right to know where the food comes from.⁷¹ Mr George Hill, a chef, submitted that commercial chefs need to know the original source of fresh or processed products:

Complete truth in menus is becoming an issue that chefs are grappling with as they attempt to ensure informed clients. 'Paddock to the plate' is now increasingly an issue on menus and with clients. There are many instances where produced, prepared, made in Australia does not indicate the [original] source and in some cases implying from Australia.⁷²

4.73 Mr Mickan of SPC Ardmona discussed the sourcing of products used in the food service industry:

In a lot of cases it is an ingredient and the person, maybe an institution, a hospital or an aged care facility has absolutely no knowledge of where the tomato or the peach comes from. There may be a procurement person or a chef or someone else making a decision about procurement, and today we are finding more and more that those decisions are based purely on price.⁷³

4.74 Mrs Valecha of SPC Ardmona returned to the food safety issue as a risk to be mitigated, clarifying that this issue will become increasingly important especially in aged care and hospitals, and 'therefore it is important we do not have a label "Made in Australia" where ingredients could be fully imported.'⁷⁴

4.75 Mr Mickan discussed commitment from New South Wales Procurement and Victorian Health to apply country of origin information to their portals and catalogues, providing clear information to people using those sites. Mr Mickan described this as an important step, as in his view 'there are a lot of people who go onto these websites and they do not actually know'.⁷⁵

71 Mr Bart Brighenti, *submission 37*, p. 2.

72 Mr George Hill, *submission 8*, p. 1.

73 Mr Steve Mickan, Sales Director, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 10.

74 Mrs Shalini Valecha, Strategy Manager, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 11.

75 Mr Steve Mickan, Sales Director, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 11.

Case study: pork

- 4.76 Australian Pork Limited claimed that the current food labelling system is failing to meet its policy objective as it confuses, rather than informs consumers.⁷⁶ Mr Andrew Spencer, Chief Executive Officer of Australian Pork Limited, stated that despite consumers wanting to support the industry, today's country of origin labelling laws make consumer informed choice almost impossible.
- 4.77 Mr Spencer explained that most consumers remain unaware of the fact that 70 per cent of 'Australian made' ham and bacon is being made from imported pork.⁷⁷
- 4.78 Australian Pork Limited further explained that Australian pork producers are similarly being let down by the current country of origin labelling regime:
- Existing rules for packaged food allow products processed or packaged in Australia (e.g. bacon made from imported pork or orange juice made of imported juice concentrate), to be labelled Made in Australia without indicating the main ingredient is not of Australian provenance. The problem is compounded by requirements for Product of Australia being so restrictive that some Australian grown food can't use the label due to small quantities of imported ingredients which are difficult to source in Australia.⁷⁸
- 4.79 When asked about labelling of bacon at a deli or butcher, Mr Spencer explained that the product does need to have a country of origin.
- Typically, if you go and have a look, all you will see is 'Made in Australia from local and imported ingredients'. One of our fears is that it is just so easy to label everything with that and you are not infringing any laws ... it means virtually nothing.⁷⁹
- 4.80 Mr Spencer explained that a consumer reading 'made in Australia' thinks the pigs come from Australia, and the pork industry is looking for a system which removes that confusion consistently and fairly.⁸⁰

76 Australian Pork Limited, *submission 6*, p. 2.

77 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 18.

78 Australian Pork Limited, *submission 6*, p. 2.

79 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 22.

80 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 20.

- 4.81 Mr Spencer described how the industry would like to label Australian made bacon with the premium claim of 'Product of Australia', but may be unable to do so as minor ingredients are imported:

The way the law is written makes it a little ambiguous as to whether that is possible, because of the ingredients – small amounts of brine – which are unavailable in Australia. Some processors have chosen to see that as a significant ingredient. Therefore the 'Product of Australia' is not an option for their labelling, so they call it 'Made in Australia'. It sits beside imported product called 'Made in Australia'. So the consumer has absolutely no ability to differentiate between the two.⁸¹

- 4.82 Mr Spencer discussed other consumer interests such as animal ethics:

There is also increasing pressure coming from growing consumer interest in intangible aspects of food and food production, such as how it is farmed, including the animal welfare issues and environmental aspects.⁸²

- 4.83 RSPCA submitted that product information on the conditions under which an animal was farmed is either lacking or ambiguous, and added that the issue of inconsistent labelling extends across all animal-derived food products – both domestic and imported – and needs to be addressed:

Current country of origin labelling is not sufficient for the consumer to be able to compare production methods between domestic and imported product.⁸³

Case study: juice

- 4.84 APAL explained that many consumers are unaware that much of the juice they buy in supermarkets is made of imported concentrate, often with water providing the only Australian content.⁸⁴ The NSW Food Authority explained that essential information is currently not clearly conveyed by the existing country of origin framework:

... manufactured products such as canned fruit or fruit juice may claim to be 'Made in Australia' which refers to the manufacture/production of the product rather than the actual content of the food, even though the significant ingredient may be

81 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 21.

82 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 18.

83 RSPCA, *submission 16*, p. 1.

84 Apple and Pear Australia Limited, *submission 23*, p. 2.

imported fruit juice concentrate or fruits. In these situations the key consumer and Australian agricultural industry interest is that the key ingredient is imported juice or fruit.⁸⁵

- 4.85 Ms Annie Farrow, Industry Services Manager, APAL, discussed the labelling of apple juice products:

The apple juice concentrate is reconstituted by mixing it with water. Then you get products ... that say, if you can find it, 'made from ... imported and Australian ingredients' ... Does that mean that it is made from imported juice and local juice mixed together? Or does it mean that it is made from imported concentrate and Australian water? ... We do not know that. I think that consumers would probably be quite concerned if they thought that when you use the term 'made from imported and local ingredients' you were actually using water as your local ingredient. I do not think that consumers would see that as being reasonable.⁸⁶

- 4.86 When asked about the percentage of total sales of apple and pear juice that is from Australian produce, Ms Farrow stated that it would be a very small proportion:

If we are importing around 224 000 tonnes of apple equivalent in juice concentrate and we are producing 290 000 – and a very small proportion of our fresh production would be going into juice – then around 90 per cent of Australian apple juice is made from concentrate.⁸⁷

- 4.87 Ms Farrow added that most of the long-life shelf lines in supermarkets are imported:

The supermarkets have got better in recent years and started to stock Australian product, but you will generally find that only the refrigerated section will contain Australian fresh juice – and a lot of those are using juice concentrate as well as Australian produce.⁸⁸

85 NSW Food Authority, *submission 45*, p. 2.

86 Ms Annie Farrow, Industry Services Manager, Apple and Pear Australia Limited, *Committee Hansard*, Melbourne, 20 June 2014, p. 16.

87 Ms Annie Farrow, Industry Services Manager, Apple and Pear Australia Limited, *Committee Hansard*, Melbourne, 20 June 2014, p. 16.

88 Ms Annie Farrow, Industry Services Manager, Apple and Pear Australia Limited, *Committee Hansard*, Melbourne, 20 June 2014, p. 16.

- 4.88 Ms Farrow explained that approximately 90 per cent of imported concentrate comes from China:

... China grows about half the world's apples and a lot of it goes into juice. Could we compete when, during harvest time, we pay a wage rate, with super, that is equivalent to about \$25 an hour, New Zealand pays around \$19 an hour, the US pays about \$12 an hour, Chile pays about \$6 an hour and China pays about \$3 an hour. No, we cannot compete like that.⁸⁹

- 4.89 When asked how the imported concentrate impacts on locally grown produce, Ms Farrow stated that the industry would not be able to replace apple juice concentrate, but imports do impact on the industry:

We would not have the capacity to replace the imported product, but that strong competition, particularly from apple juice concentrate, simply means that our second-grade fruit gets displaced. That fruit usually goes into processing of some sort – either into juice or into canning ... If we are not able to put our product there, it goes onto the wholesale market. If it goes onto the wholesale market, then that depresses the whole price of apples, including the grade 1 or premium fruit ... So it does have consequences for us but also for industry more generally because we just cannot compete against imported concentrate ...⁹⁰

- 4.90 Cider Australia also discussed the origin of juice concentrates and how improved labelling could benefit consumers:

Improved country of origin labelling would benefit Australian producers and consumers of cider by placing pressure on the major Australian producers to use Australian juice, encouraging the cider producers that already use Australian juice to continue to do so, and giving consumers greater confidence that the claims on labels are accurate.⁹¹

Case study: chocolate

- 4.91 Chocolate is a manufactured product discussed in many submissions. The key ingredient for chocolate, cocoa, is imported but manufacturing takes place here; cocoa isn't available in Australia in sufficient commercial quantities.

89 Ms Annie Farrow, Industry Services Manager, Apple and Pear Australia Limited, *Committee Hansard*, Melbourne, 20 June 2014, pp. 19-20.

90 Ms Annie Farrow, Industry Services Manager, Apple and Pear Australia Limited, *Committee Hansard*, Melbourne, 20 June 2014, p. 16.

91 Cider Australia, *submission 26*, pp. 1-2.

- 4.92 AIG noted that the processing of chocolate is significantly complex, undergoing substantial transformation to warrant the claim 'Made in Australia' or 'Made in Australia from local and imported ingredients'.⁹²
- 4.93 Mr Gary Dawson, Chief Executive Officer, Australian Food and Grocery Council, also discussed the ingredients for chocolate being imported and transformed in Australia:
- The cocoa pretty much all comes from overseas. So Haigh's Chocolates in South Australia, Nestle, Cadbury, Ferrero and Mars all have big operations in Australia, servicing both the domestic and the export markets. That is a great case of substantial transformation. The chocolates coming out of the Haigh's factory or the Cadbury factory in Hobart clearly are made in Australia. No-one would doubt that. That is the common sense test. Focusing entirely on the origin of the ingredients, if that prevented them saying 'made in Australia', would be an unintended consequence.⁹³
- 4.94 Mr Dawson further discussed chocolate production and the substantial transformation test:
- With product being sourced in many different markets, depending on the circumstances, from month to month the minimum of 50 per cent figure may fluctuate. The threshold is arbitrary and ingredients costs distort the calculation – that is, expensive imported ingredients like cocoa distort that especially where there is no option but to import. Managing business practicalities and the uncertainty of the cost of production means that companies act conservatively and quite often qualify their claims.⁹⁴
- 4.95 The AIG submission provided an example of a chocolate product that it suggests could be considered a 'Product of Australia':
- A jelly confectionery can claim 'Product of Australia' when all of its ingredients are Australian and it is processed in Australia. An ambiguity is illustrated when that jelly is coated in Australian made chocolate, for example chocolate coated snakes. The final product has approximately three to six percent imported cocoa products. It may be argued both ways that the chocolate is/isn't providing the significant ingredient/component, however the

92 Australian Industry Group, *submission 48*, p. 7.

93 Mr Gary Dawson, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, Canberra, 8 May 2014, p. 38.

94 Mr Gary Dawson, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, Canberra, 8 May 2014, p. 34.

cocoa content certainly imparts significant character in the manufacture of the chocolate that coats the jelly snake.

The confectionery industry believes that a product such as chocolate coated snakes should be able to be called 'Product of Australia' as it is essentially Australian. More definitive guidance for business would assist the food industry to ensure consistent application.⁹⁵

- 4.96 Mr Piper of AIG reiterated that consumers are more accepting of country of origin claims for high-end manufacturing and processed foods such as confectionery, understanding that the key ingredients are imported:

... current country-of-origin labelling is generally acceptable, with a few improvements that we have suggested. An important reason that the industry is generally comfortable with the regulations is that it receives little consumer feedback on its country-of-origin labelling. One large company advised us that 0.5 per cent of comments are on the topic, while small companies report receiving a few communications from consumers encouraging them not to import. However, that probably shows that labelling is well understood by the consumers. They know that the product is locally made. The best-case scenario would be to ensure there are reduced costs on Australian manufacturing products while ensuring consumers are better versed and educated in what the labelling actually says and does.⁹⁶

Case study: dairy

- 4.97 The Australian Dairy Industry Council (ADIC) discussed the use of imported ingredients that are essential to value-adding for Australian dairy products:

... conversion of milk into the variety of dairy products developed in Australia requires a wide range of ingredients. Many of these are included at low amounts to facilitate functional transformations in the milk during processing, and are not produced in Australia either because the raw materials are not available, or they cannot be economically and sustainably manufactured here. These include:

- hydrocolloids and stabilisers (e.g. pectin, carrageenan, guar gum, locust bean gum, some modified starches);

95 Australian Industry Group, *submission 48*, p. 6.

96 Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, pp. 35-36.

- flavours and colours;
- vitamins and minerals;
- animal and microbial rennets;
- cultures for fermented products such as yogurts and cheeses;
- enzymes; and
- yeasts and moulds.⁹⁷

4.98 The ADIC also explained that other raw ingredient materials are imported either because of seasonality, lack of suitable climatic conditions for agriculture in Australia or inability to provide continuity of supply, including:

- fruits and fruit juices that are processed into stabilised fruit preparations that are used as ingredients in yogurts, flavoured milks and dairy desserts;
- cocoa that is processed to chocolate; and
- coffee beans that are processed to coffee powders.⁹⁸

4.99 Mr Stewart Davey of the ADIC further discussed the use of labelling of Australian dairy products, particularly focusing on what would require a 'local and imported' tag:

From our perspective, certainly 'Product of Australia' and 'Made in Australia' are used very extensively across what we would determine is a pure dairy product. 'Made from local and imported ingredients' might start to be used where a dairy powder might be a significant constituent in a product that is blended and has a whole lot of other things in it. From our perspective, we would not necessarily view that as a pure dairy product. When we talk about dairy, we would be considering liquid milk, butter, cheese, yoghurts and dairy dessert type of products. When you start to get into the ice cream and infant formula end of the scheme of things, you would expect that some of those probably do use the combined 'Made from local and imported ingredients'.⁹⁹

4.100 The ADIC discussed the need for any labelling changes to not impact on the dairy industry, particularly with regard to the use of minor ingredients:

The current country of origin labelling laws allow for Australian milk to be processed into dairy products using minor ingredients as identified above, in Australian manufacturing plants using Australian labour, and then be labelled as either Made in Australia

97 Australian Dairy Industry Council, *submission 43*, p. 3.

98 Australian Dairy Industry Council, *submission 43*, p. 3.

99 Mr Stewart Davey (Manager, Regulatory Affairs, Dairy Australia), Australian Dairy Industry Council, *Committee Hansard*, Melbourne, 20 June 2014, p. 28.

or Product of Australia. If consideration is given to amending the current country of origin labelling requirements as they relate to food, it is essential that these changes do not unduly restrict the use of these minor ingredients.¹⁰⁰

- 4.101 Dr Stahle of the ADIC reiterated that any labelling regime changes could impact the dairy industry, particularly concerning the 'Product of Australia' claim and the use of minor imported ingredients, noting that if a product had to be categorically 100 per cent then essentially the only Australian dairy product you would have on the market here is liquid milk.¹⁰¹ Mr Davey of the ADIC summarised the organisation's view that the current country of origin labelling system is working:

For us, we can pretty confidently say that the system satisfies the consumer base for dairy. I think we are open to recognising that it is probably not a perfect system ... and that alludes to the fact that there are issues for others, but it is certainly not an issue for dairy.¹⁰²

Case study: seafood

- 4.102 There was much interest in the inquiry from the seafood sector, particularly regarding the mandating of country of origin labelling of seafood in the food service market to address consumer perceptions and to enable them to make informed purchases.
- 4.103 Seafood industry representatives in submissions and public hearings described challenges in changing consumer perceptions and behaviour while ensuring compliance costs to industry were not excessive.
- 4.104 As noted earlier in this report, Standard 1.2.11 of the Code does not apply to food offered for immediate consumption where the food is sold by restaurants, canteens, schools, caterers, self-catering institutions, prisons, hospitals or other similar institutions e.g. nursing homes.¹⁰³
- 4.105 The National Seafood Industry Alliance (NSIA) stated that Australian seafood consumers demand seafood from sustainable fisheries and farms, and that there is a strong community perception that seafood sold in

100 Australian Dairy Industry Council, *submission 43*, pp. 3-4.

101 Dr Peter Stahle (Executive Director, Australian Dairy Products Federation), Australian Dairy Industry Council, *Committee Hansard*, Melbourne, 20 June 2014, p. 28.

102 Mr Stewart Davey (Manager, Regulatory Affairs, Dairy Australia), Australian Dairy Industry Council, *Committee Hansard*, Melbourne, 20 June 2014, p. 31.

103 Food Standards Australia New Zealand, *submission 12*, p. 2.

Australian venues for immediate consumption is sourced locally, despite the majority being imported.¹⁰⁴ Mr Scott Wiseman of the NSIA explained:

Research conducted by Roy Morgan, FRDC and Seafood CRC demonstrates that consumers commonly assume that the seafood provided in dining venues, takeaway venues and the like, is locally sourced when this may not actually be the case. Some 70 per cent of seafood in Australia is imported. There is a requirement to notify consumers of the fish species but not whether the product is imported or Australian harvested.¹⁰⁵

4.106 Mr Marty Phillips, President of the Australian Barramundi Farmers Association, believes consumers should be able to make an informed choice about the seafood they purchase:

At the retail outlet, fishmongers, consumers have a choice – they can choose. But in the food service industry, except for the Northern Territory, no such laws exist. That is a real hole in the system that we think needs to be fixed so that the consumers – the mums and dads feeding their families and their kids – can make an informed choice and choose the imported product or the Australian product. There is room for both of us here.¹⁰⁶

4.107 The NSIA believes the consumer demand for information on country of origin is far higher in seafood than any other food, and therefore is not suggesting country of origin labelling for all food groups.¹⁰⁷ Ms Helen Jenkins, Executive Officer of the Australian Prawn Farmers Association supported this view:

The consumer demand for country of origin labelling ... is far higher in seafood than in other any other food group. It gives the consumer the ability to identify seafood from unregulated fisheries. The high standards in sustainability, safety and hygiene in Australia place additional cost on the Australian industry and without being able to effectively identify our product in the marketplace these measures simply restrict our ability to compete.¹⁰⁸

104 National Seafood Industry Alliance, *submission 31*, p. 8.

105 Mr Scott Wiseman (Executive Officer, Queensland Seafood Industry Council), National Seafood Industry Alliance, *Committee Hansard*, Brisbane, 3 July 2014, p. 6.

106 Mr Marty Phillips, President, Australian Barramundi Farmers' Association, *Committee Hansard*, Brisbane, 3 July 2014, p. 7.

107 National Seafood Industry Alliance, *submission 31*, p. 8.

108 Ms Helen Jenkins, Executive Officer, Australian Prawn Farmers Association, *Committee Hansard*, Brisbane, 3 July 2014, p. 7.

- 4.108 The NSIA stated that there is an urgent need for intervention to remove the current gap in the legislation and to include an amendment that specifically refers to country of origin labelling requirements by venues providing seafood for immediate consumption or through venues such as restaurants, cafés, hotels, clubs and takeaways.¹⁰⁹

Seafood in the Northern Territory

- 4.109 Mr Rob Fish, Chair of the Northern Territory Seafood Council (NTSC), claimed that about 40 per cent of fish consumed in Australia is consumed in a restaurant setting.¹¹⁰

- 4.110 The Northern Territory Government introduced regulations in November 2008 to make it a requirement for all venues to identify imported seafood at the point of sale to the consumer.¹¹¹ The NTSC discussed the initial consumer reaction to this move:

With this improved level of labelling at the dining outlets, the reaction from the consumer was first one of shock to find out that the majority of iconic NT species barramundi sold around the Territory was not local and in fact imported product.¹¹²

- 4.111 The NTSC submission explained that the improved labelling requirement gained considerable public support and saw many restaurants move to use local product based on the demands of the consumer.¹¹³

- 4.112 The NTSC completed a research project in 2010, with the results consistently demonstrating a high level of consumer and food service sector support for seafood labelling laws that identify imported seafood.¹¹⁴

- 4.113 The NTSC stated that the cost to the food service sector in implementing the labelling laws was highest initially following the legislation's introduction, as large expenditure items such as menu boards were updated:

Venues advised they spent on average \$630 implementing requirements for the labelling laws. Several venues spent less than \$100 in total since the laws were introduced in November 2008, while one venue reported spending several thousand dollars

109 National Seafood Industry Alliance, *submission 31*, p. 8.

110 Mr Rob Fish, Chair, Northern Territory Seafood Council, *Committee Hansard*, Brisbane, 3 July 2014, p. 7.

111 Northern Territory Seafood Council, *submission 27*, p. 2.

112 Northern Territory Seafood Council, *submission 27*, p. 2.

113 Northern Territory Seafood Council, *submission 27*, p. 2.

114 Northern Territory Seafood Council, *submission 27*, p. 3.

implementing the labelling laws as a result of menu board changes.¹¹⁵

- 4.114 Mr Fish of the NTSC discussed the implementation of the seafood labelling system and the benefits to the industry, including strengthening relationships with consumers:

It took about 12 months for some real changes. Straightaway, there were some massive advantages for the industry; I'm not going to lie. Straightaway, everyone was talking about an industry that they did not know existed ... it has now put the industry back on the map; we have got a 'Support NT Caught' campaign going. So we have reconnected with the consumer as an industry, as opposed to simply a product. The benefits have escalated since the first year. We have Woolies and Coles on board now; they are using some of the labels – and that is something they said they would never do.¹¹⁶

- 4.115 When asked how the restaurant and catering industry in the Northern Territory dealt with the changes, Mr Fish stated that there was resistance at the start, although some of those who resisted the strongest are now the industry's biggest partners:

I often have a difficulty with the concept (a) that this is put forward as being too expensive or (b) that, and this concerns me more, 'we can't afford to make money out of fish at a restaurant if we tell people it's imported'. If we keep silent, we can have a bigger margin. To me that would be the trigger to do it. In the end I think there is more support for seafood now in the Territory. The casino which was one of the bigger knockers at the start, now advertises local products ... I do not know anyone who is now complaining about it.¹¹⁷

- 4.116 Mr Fish explained that, for a scheme like the Northern Territory's to be implemented elsewhere, the exemption from Standard 1.2.11 of the Code where restaurants do not have to label would need to be removed.¹¹⁸

115 Northern Territory Seafood Council, *submission 27*, p. 9.

116 Mr Rob Fish, Chair, Northern Territory Seafood Council, *Committee Hansard*, Brisbane, 3 July 2014, p. 12.

117 Mr Rob Fish, Chair, Northern Territory Seafood Council, *Committee Hansard*, Brisbane, 3 July 2014, p. 13.

118 Mr Rob Fish, Chair, Northern Territory Seafood Council, *Committee Hansard*, Brisbane, 3 July 2014, p. 14.

Reaction from restaurants

4.117 The Committee invited the Restaurant and Catering Industry Association of Australia (RCIAA) to appear at a public hearing to discuss country of origin labelling in the food service sector and address the issues raised by the seafood industry organisations that made submissions to the inquiry.

4.118 Mr John Hart, Chief Executive Officer of the RCIAA, was very straight forward in outlining the Association's position:

Our association opposes any suggestion that the labelling requirement should be extended or the exemption removed for unpackaged food, particularly that served in restaurants – unsurprisingly.¹¹⁹

4.119 Mr Hart stated that the practicalities of including labelling provisions on restaurant menus would be incredibly onerous and very expensive to administer, with an estimated cost of \$300 million per annum to introduce the change.¹²⁰ Mr Hart told the Committee that the average cost of menu changes is \$8 000 to \$10 000, which was ascertained through survey work on surcharging changes.¹²¹ Mr Hart discussed what he considered to be the more important issue of how Australian product can be best promoted on restaurant menus:

We believe that that can be best achieved by a positive promotional effort around Australian product, as already happens in a number of different product sectors. There is really no reason why it should not happen in relation to seafood.¹²²

4.120 Mr Hart outlined consumer research conducted by the RCIAA which suggested that the consumer's prime concern is product quality:

The information from the research that we undertook suggests that that is their primary consideration, not origin of the product or in fact even the health or nutritional impact of the product; it is the quality of the product.¹²³

4.121 Mr Hart explained that the uncertainty of supply of produce made it difficult for restaurants:

119 Mr John Hart, Chief Executive Officer, Restaurant and Catering Industry Association of Australia, *Committee Hansard*, Brisbane, 3 July 2014, p. 16.

120 Mr John Hart, Chief Executive Officer, Restaurant and Catering Industry Association of Australia, *Committee Hansard*, Brisbane, 3 July 2014, p. 16.

121 Mr John Hart, Chief Executive Officer, Restaurant and Catering Industry Association of Australia, *Committee Hansard*, Brisbane, 3 July 2014, p. 20.

122 Mr John Hart, Chief Executive Officer, Restaurant and Catering Industry Association of Australia, *Committee Hansard*, Brisbane, 3 July 2014, p. 17.

123 Mr John Hart, Chief Executive Officer, Restaurant and Catering Industry Association of Australia, *Committee Hansard*, Brisbane, 3 July 2014, p. 17.

... the difficulty there is not so much the cost of implementing at the time; it is the fact that the supply chain is neither consistent nor reliable. If on a particular day you could not get a particular product that was the Australian product, you would have to change the menu in order to comply.¹²⁴

- 4.122 Mr Hart discussed the inaccurate labelling of seafood by some businesses to ensure they are in compliance with the labelling requirements:

A number of the businesses have certainly made declarations of imported product when, in fact, they might not be serving imported product ... And that sort of may-contain-traces-of-nuts type approach to this – my view is that that is not a good outcome. Essentially, what you are doing is putting a disclaimer, to protect yourself, and you end up not promoting Australian product. And I am not sure that the consumer wins out of that.¹²⁵

- 4.123 Committee comments and a recommendation on this issue are outlined in chapter seven of the report.

Water neutrality

- 4.124 The inclusion of water as a product ingredient was discussed at length during several public hearings for the inquiry. There appears to be some confusion regarding the uses of water for reconstitution of juice concentrates and as an ingredient in the substantial transformation of a product. Submissions to the inquiry suggested that water should not be considered as an ingredient in a substantially transformed product.

- 4.125 APAL was keen to ensure that:

... a water neutral position is adopted so that if water is the only Australian sourced ingredient it does not make the whole product eligible to be labelled as Australian in origin.¹²⁶

- 4.126 The use of water as an ingredient was fully explained by the Department of Industry in submissions to the inquiry and at two public hearing appearances. In its submission, the Department outlined the relevant section from the ACL, Part 5-3, section 255 (9):

... in relation to an ingredient or component that has been dried or concentrated by the evaporation of water, and to which water has

124 Mr John Hart, Chief Executive Officer, Restaurant and Catering Industry Association of Australia, *Committee Hansard*, Brisbane, 3 July 2014, p. 21.

125 Mr John Hart, Chief Executive Officer, Restaurant and Catering Industry Association of Australia, *Committee Hansard*, Brisbane, 3 July 2014, p. 18.

126 Apple and Pear Australia Limited, *submission 23*, p. 3.

been added to return the water content of the ingredient or component to no more than its natural level:

- (a) the weight of the water so added is included in the weight of the ingredient or component; and
- (b) the water so added is treated as having the same origin as the ingredient or component, regardless of its actual origin.¹²⁷

4.127 The ACCC's *Guide for business* explains further that the use of water for the reconstitution of imported fruit juice concentrate into fruit juice is not considered substantial transformation.¹²⁸ The *Guide for business* however does note that the ACL provides for regulations to prescribe particular processes that would or would not constitute fundamental changes for the purpose of the substantial transformation test. However, no regulations have been prescribed as at the date of publishing this guide.¹²⁹

4.128 The Department of Industry discussed the use of water in that it may be included as part of its 'Australian' content for the purposes of a 'made in' or 'product of' claim. The Department referred to the ACCC advice that the use of water to reconstitute juice concentrate would be insufficient to make an 'Australian made' claim. As for 'grown in' claims:

... the ACL provides that water used to reconstitute the food product will be treated as having the same origin as the ingredient, regardless of whether Australian water is used.¹³⁰

4.129 The Department of Industry provided a practical example concerning the use of water and the substantial transformation test:

If a carton of tomato juice was made from imported Italian tomato concentrate, which was then reconstituted in Australia, it would not meet any of the 'safe harbours' in the ACL.

In particular, as ACCC guidance suggests that the conversion of tomato concentrate to tomato juice would not constitute substantial transformation, the juice would not meet the 'safe harbour' for general country of origin representations such as 'Made in'.

Therefore, a claim that the juice was 'Made in Australia' or even 'Made in Australia from local and imported ingredients' is likely to be considered misleading.

127 Department of Industry, *submission 20*, p. 4.

128 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

129 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

130 Department of Industry, *submission 20.1*, p. 9.

The supplier would need to consider alternative origin representations, taking care to ensure that it could demonstrate that any claim it decided to make was not false, misleading or deceptive.¹³¹

- 4.130 The Department of Industry's example also explained how water could be included in a product's ingredients and which claims could be made:

If the same tomato concentrate were to be used to make a can of minestrone soup in a factory in Adelaide, the cost of the Australian water used to reconstitute those tomatoes, together with the cost of other Australian ingredients, labour and overheads, could be counted towards the overall value of the Australian content of the soup.

As the tomato concentrate would have undergone substantial transformation in the making of the minestrone soup, should the value of Australian content account for at least 50 per cent of the total production cost of that soup, it would meet the 'safe harbour' requirements for general country of origin representations.

This would allow the soup to be labelled 'Made in Australia', 'Made in Australia from imported tomato concentrate', 'Made in Australia from Italian tomato concentrate', or a wide range of other descriptions, without the claim being considered false, misleading or deceptive.

However, as the soup would contain a significant imported ingredient (the tomato concentrate), a 'Product of Australia' or 'Grown in Australia' label is likely to be considered false, misleading or deceptive, even if a number of the other ingredients were grown here.¹³²

- 4.131 When considering water as an input in the substantial transformation test, Mr Peter Darley (Chair, Horticulture Committee) of the NSW Farmers Association, submitted that water must be treated neutrally.¹³³ Mr Samuel Reid, President of Cider Australia, also suggested that water should not be considered in the cost or the weight of ingredients of a product.¹³⁴ These suggestions are in agreement with part of Recommendation 42 of the

131 Department of Industry, *submission 20.1*, p. 9.

132 Department of Industry, *submission 20.1*, p. 10.

133 Mr Peter Darley (Chair, Horticulture Committee), NSW Farmers Association, *Committee Hansard*, Brisbane, 3 July 2014, p. 37.

134 Mr Samuel Reid, President, Cider Australia, *Committee Hansard*, Canberra, 26 June 2014, p. 2.

Labelling Logic report which sought to exclude water from a product's ingoing weight of ingredients and components.¹³⁵

- 4.132 Industry organisations including Apple and Pear Australia¹³⁶ and Cider Australia¹³⁷ expressed strong concern that imported juice concentrate that is reconstituted with Australian water was compromising the integrity of Australia's labelling system for these sectors. Further, Cider Australia submitted that this may jeopardise the long-term viability of its members:

To sustain growth and provide for a maturing market, consumers must be able to identify what they are buying, and producers must be able to differentiate their product. Existing labelling laws, including country of origin labelling requirements, do not achieve these objectives and will increasingly hamper competition, diversification and investment in the cider sector as the industry grows and matures.¹³⁸

- 4.133 Similar concerns were also expressed by Citrus Australia – SA Region.¹³⁹

- 4.134 A different view was taken by Mrs Denita Wawn, Chief Executive Officer of the Brewers Association of Australia & New Zealand. Mrs Wawn opposed the exclusion of water from a product's ingredients, as water is a key ingredient in the production of beer:

Nearly 90 per cent of beer is actually water, and it has a significant impact [on] the quality and character of the finished product. For that reason we are strongly opposed to the total exclusion of water from the requirement to calculate the origin of ingredients. As such, we believe that the current labelling as it stands may not be meeting consumer needs but we primarily believe that it is because of a lack of understanding of those terms as opposed to the terms themselves.¹⁴⁰

- 4.135 Mrs Wawn added that if water were treated neutrally, some of its members would be required to label their products with something other than 'Product of Australia'.¹⁴¹

135 *Labelling Logic: Review of Food Labelling Law and Policy* (2011), available at www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/labelling-logic.

136 Apple and Pear Australia, *submission 23*, p. 1.

137 Cider Australia, *submission 26*, p. 2.

138 Cider Australia, *submission 26*, p. 1.

139 Citrus Australia – SA Region, *submission 28*, p. 3.

140 Mrs Denita Wawn, Chief Executive Officer, Brewers Association of Australia & New Zealand, *Committee Hansard*, Canberra, 26 June 2014, p. 5.

141 Mrs Denita Wawn, Chief Executive Officer, Brewers Association of Australia & New Zealand, *Committee Hansard*, Canberra, 26 June 2014, p. 6.

Committee comment

- 4.136 The Committee acknowledges the views, opinions and concerns raised by submitters to the inquiry on this issue. However, based on the evidence provided, the Committee is satisfied that the current arrangements for the treatment of water as a reconstitution element and as a product ingredient are suitable.

Seasonality and packaging

- 4.137 Submissions to the inquiry discussed the ability of producers and manufacturers to change labels occasionally, or perhaps often, to accurately reflect the content of a product based on the seasonal availability of produce. How practical and costly this is for manufacturers was discussed at length.
- 4.138 The Committee sought the views of many organisations on the seasonal variation of Australian produce, the use of imported produce to cover shortfalls and the labelling problems these issues present.
- 4.139 The Australian National Retailers' Association (ANRA) submission explained that its major supermarket members demonstrate a strong preference for providing Australian sourced produce whenever it is available at sufficient quantities and quality, at a fair and reasonable price, but that supplies may be supplemented by imported produce 'typically being sold when seasonal shortages limit Australian supply'.¹⁴²
- 4.140 ANRA discussed the use of the 'Made in Australia from local and imported ingredients' label as a cover for seasonal variation in produce and the use of imports:
- This is a qualified claim that can be used where it is not possible for a standalone 'Made in' claim to be made, either due to uncertainty around the question of substantial transformation and whether 50 per cent costs of production is met or to adjust to seasonal changes in availability of individual ingredients.¹⁴³
- 4.141 Mr Christopher Preston, Director, Legal and Regulatory at the Australian Food and Grocery Council discussed the variation in supply of Australian produce and how companies meet the safe harbour thresholds:
- Imagine the situation where the switch from the domestic supply to the international supply for that key ingredient takes you below the 50 per cent cost threshold that is currently in there for the safe harbour. All of a sudden, you can meet the safe harbour for 10

142 Australian National Retailers' Association, *submission 21*, p. 1.

143 Australian National Retailers' Association, *submission 21*, p. 1.

months of the year, but for two months you cannot. The ACCC guidance basically says you must meet it all the time forever, so that is a situation where the Australian industry, as much as it might want to go down a route of having an Australian product, simply does not have the supply basis here.¹⁴⁴

4.142 Mr Preston further discussed the difficulties of making the 'made in' claim while dealing with seasonal variation:

That is why we have the 'made in Australia from local and imported ingredient'-type situations happening; it is an industry response to an arbitrary 50-per-cent-cost rule that means sometimes you meet it and sometimes you do not ... That is an example where the current law probably could use some reform so that companies do not lose the opportunity to make a simple statement of 'made in Australia' just because, for a predictable two months of the year, they might have to source from overseas.¹⁴⁵

4.143 The ACCC's *Guide for business* discusses at length the issue of seasonal variation in produce and how it appears on labelling claims. A number of issues are raised:

... the front labelling on a food product may make the prominent claim that it is 'Produce of Australia'. On the back label, along with the statement of ingredients and manufacturer's details is the qualification 'due to seasonal variations in availability, some of the contents may be imported'.

This additional information raises a number of problems:

- In the first place, it throws the primary claim into doubt. If, at certain times, the contents may be imported, how can it be 'Produce of Australia' or even 'Made in Australia' at those times?
- Secondly, attempts to modify or qualify the phrase 'produce of' (or similar constructions) may be problematic for businesses wishing to rely on the safe harbour defence, given the strict requirements for establishing the defence.
- Thirdly, the primary claim is made less clear by the use of a term that may not be understood by consumers. 'Seasonal variations in availability' may mean something specific to

144 Mr Christopher Preston, Director, Legal and Regulatory, Australian Food and Grocery Council, *Committee Hansard*, Canberra, 8 May 2014, p. 38.

145 Mr Christopher Preston, Director, Legal and Regulatory, Australian Food and Grocery Council, *Committee Hansard*, Canberra, 8 May 2014, p. 38.

manufacturers, but this does not mean that consumers have the same understanding.¹⁴⁶

- 4.144 Based on the above scenario, the *Guide for business* then questions whether the contents are imported each year during the Australian off-season, or whether in some years there is a shortage of supply and it is topped up by imports. The *Guide for business* notes that the former suggests 'a regular pattern of imports, the latter that imports are used in an ad hoc manner to bolster local shortages'.¹⁴⁷ The practical question and answer scenario aids producers and manufacturers in their labelling decisions concerning seasonal variability and the use of imported produce:

What if some of my product (components or ingredients) is imported, but only sometimes? Sometimes I just can't source my raw materials in Australia.

If you know, or should reasonably have known, ahead of time that a significant component or ingredient will be imported, you shouldn't use a claim of 'Product of Australia'.

You cannot simply ignore the fact that the components/ ingredients are imported, regardless of why they were imported.

If the local shortage is related to seasonal availability, the best policy may be to say so, but in a way that makes it clear why. Clarify whether the drop in local availability is due to an irregular crop shortage or a regular replacement by imports in the local off-season, and ensure that it is not used in conjunction with a claim that implies otherwise.

You could utilise different packaging with accurate labelling for when Australian produce is used, and when it is not. You could also use a claim such as 'Australian apples used 11 months of the year, New Zealand apples used in July' when also including on the packaging the date the product was made to allow consumers to discern whether imported or Australian produce is used.¹⁴⁸

Costs of changes to packaging

- 4.145 The Committee sought advice from submitters on the costs of changing packaging to reflect seasonality or changes in source of produce.

146 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

147 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

148 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

4.146 Mr Callum Elder from Simplot Australia explained that it is not just the cost but the complexity and the work behind the scenes by corporate people in terms of ensuring claims are right, sourcing from different countries. Mr Elder added that the company would need multiple forms of packaging which is very expensive.¹⁴⁹ In contrast however, the AMWU discussed how some companies manage that process:

Most processors in Australia source their supplies from the same local suppliers. It is generally only in times of shortages due to temporary crises, for example, in the local environment that most processors will change suppliers. Additionally, larger suppliers are known to occasionally change their labels due to seasonal or other promotions and have built this into their cost structures. Any modifications to the labelling regime in respect of country origin would therefore not present a significant compliance burden to the vast majority of local processors.¹⁵⁰

4.147 When asked just how much of an impediment changing labels to reflect seasonal variation is to the manufacturer, Mr Tom Hale of the AMWU stated that some producers regularly change packaging:

... for instance, the growers down at Simplot in Tasmania with the frozen vegies will sometimes have to substitute imported as part of it because you have three vegies and only two of them are available at the moment. They currently carry packaging that says some of it is local and imported. Some of the packaging is 'produce of Australia'. They use whatever packaging is appropriate depending on the availability. So they are currently doing it.¹⁵¹

4.148 Safcol Australia suggested that companies would not carry more than a year's supply of labels, so there should be few costs for redundant labels. Safcol Australia also noted that many companies buy their labels offshore to reduce costs and that the cost of changing product labels was a regular part of the business:

... the cost to change a label for a can of soup would be between \$1 000 and \$1 500 per label which would not be prohibitive. It is also a fair assumption that a majority of product labels are changed at least every two years anyway as companies continue to revise their labels as part of an ongoing business process, so

149 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 23.

150 AMWU, *submission 22*, p. 4.

151 Mr Tom Hale, Acting National Divisional Secretary Food and Confectionery Division, Australian Manufacturing Workers Union, *Committee Hansard*, Melbourne, 20 June 2014, p. 6.

assuming that the Government allowed a grace period of 2 years to have changes in the market, a majority of any change costs would fall within normal business expenses.¹⁵²

- 4.149 Mr Elder, however, stated that changing packaging would be a significant cost issue for its business:

In order for us to change our packaging – and currently we are looking at potential country-of-origin labelling changes, health claims labelling changes, which are coming in as of 1 January 2016 – each one of those changes costs us anywhere from \$2 million to \$6 million across the company for literally no benefit to the company.¹⁵³

- 4.150 Mr Elder did explain that the issue could be overcome:

Where you would have to do it, you would do it, and that is just part of being in business as far as I am concerned ... If we did have to bring in certain components from overseas, particularly in some of the mixes, we would have to have the packaging that would reflect that.¹⁵⁴

- 4.151 Mr Elder also suggested that there would be the possibility to quickly alter some forms of packaging during production with advances in printing technology. Mr Elder also accepted that country of origin information stamped on the 'use by date' panel was possible but not simple.¹⁵⁵

- 4.152 Mr Elder discussed some of the specific costs of changing labels, namely the printing plates and packaging:

Generally, you have several plates to make up a food label. There is usually a front label, a rear label and there may even be a cap. Changing each one of those elements has a different cost, depending on what type of primary packaging material it is, be it plastic, cans, labels for the cans and so forth ... So right across our entire product range, something that will require us to change every plate would cost us approximately \$6 million.¹⁵⁶

152 Safcol Australia Pty Ltd, *submission 53*, p. 2.

153 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 23.

154 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 23.

155 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 23.

156 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, pp. 23-24.

- 4.153 Mr Richard Mulcahy of AUSVEG does not believe that changing labels is a significant issue:

... the issue I hear most frequently raised ... is that it costs so much money to change the pack ... you can go to any supermarket and see 20 per cent larger this week for your cereal or whatever, so I think it is a nonsense to say they cannot change.¹⁵⁷

- 4.154 Mr Mulcahy added that it is most important to accurately detail exactly what is in the package:

I know the view has been advanced to me that some manufacturers want to be able to chop and change Australian and foreign product and not have that evident on the pack. I do not think that that is acceptable in terms of what is reasonable consumer behaviour. I do not think there are compelling arguments for us not being more forthcoming. Consumers want it.¹⁵⁸

- 4.155 The National Farmers' Federation stated that it is keen to ensure that labelling laws are not impractical to implement and that any changes should recognise the potential need to vary labelling in response to seasonal Australian domestic food supplies:

It must be taken into account that at some times in the year it may be necessary for manufacturers to import produce. As manufacturers are unlikely to modify labels on a seasonal basis, requirements should not be so inflexible so as to provide a disincentive for manufacturers to utilise any form of Australian labelling and in doing so, devalue some of the benefits of striving for an Australian grown point of difference.¹⁵⁹

- 4.156 Mr Timothy Piper of AIG was also keen to minimise the impact of any labelling changes on the group's members:

We are going through so many labelling derivations in Australia at the moment, some of which are just pointless, some of which are just costly and some of which are not going to help consumers. So, please, whenever you are making decisions, take that into account. The companies are tired of it.¹⁶⁰

157 Mr Richard Mulcahy, Chief Executive Officer, AUSVEG, *Committee Hansard*, Sydney, 9 May 2014, p. 5.

158 Mr Richard Mulcahy, Chief Executive Officer, AUSVEG, *Committee Hansard*, Sydney, 9 May 2014, p. 5.

159 National Farmers' Federation, *submission 42*, pp. 6-7.

160 Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, p. 39.

4.157 Mr Elder of Simplot Australia also recommended that there be a significant window for industry to adopt any changes that are required:

... [that would reduce] the cost and the complexity for us and enables us to use existing packaging. But one thing we must have as an industry is a stock-in-trade provision. Many of the products that we produce have five-year 'best before' codes ... For the label change that is coming in in 2016, there is no current stock-in-trade provision. That will be absolutely disastrous for us.¹⁶¹

4.158 The Department of Industry submission discussed the current flexibility of labelling rules and that changes to those rules may be detrimental to producers:

Similarly, due to seasonality, the source of particular ingredients for processed or blended food could vary throughout the year, and in fact could vary within a batch. Again, the flexibility built into the current [country of origin labelling] framework permits an adapted claim to be made in such cases – allowing producers to make clear and accurate claims without the need to change packaging. Highly prescriptive rules, especially those that would require the identification of the origin of ingredients, could prove to be difficult, costly and risky for producers should they be obliged to alter labels on a regular basis to adjust for seasonal availability.¹⁶²

4.159 Safcol Australia discussed the implementation of any labelling regime changes, referring to a changeover period:

... if the Government allowed a grace period of two years from the start of new legislation to final manufacture then the changeover costs would be minimal and any company using this argument as an excuse is probably just trying to control the situation to suit its own needs and marketing strategy.¹⁶³

Committee comment

4.160 The Committee appreciates the views provided by industry during the course of the inquiry. The Committee is always mindful of minimising change and associated costs for industry, essentially promoting a 'do no harm' ethos when considering making recommendations.

161 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, pp. 23-24.

162 Department of Industry, *submission 20*, p. 9.

163 Safcol Australia Pty Ltd, *submission 53*, p. 2.

- 4.161 However, evidence to the inquiry suggests that changing labels and packaging is a regular occurrence in the food production industry and should not be a tremendous burden should changes be made to the country of origin labelling laws.

International dimensions: trade obligations and food imports

- 5.1 A recurring theme in the debate about reform of country of origin food labelling in Australia has been the international dimension: how does Australia observe its international trade obligations whilst also ensuring that consumers are provided with the country of origin information which repeated surveys have shown is highly desired?
- 5.2 This international dimension was incorporated in the relevant terms of reference:
- the impact on Australia's international trade obligations of any proposed changes to Australia's country of origin labelling laws; and
 - whether Australia's country of origin labelling laws are being circumvented by staging imports through third countries.
- 5.3 This chapter will examine these issues. The chapter will begin with a brief overview of Australia's trade obligations. The chapter will then examine the recurring misconception that food imports from New Zealand do not require a country of origin statement, before discussing whether there is evidence of the staging of imports in third countries in an attempt to circumvent Australian laws.

Trade obligations relevant to country of origin food labelling

- 5.4 Australia is party to a range of binding international trade agreements that relate to country of origin food labelling. Generally, these agreements ensure that Australia's domestic regulation cannot create a barrier to trade or distort trade in favour of its domestic markets. As a party to these agreements, Australia must ensure that its domestic regulations are

compliant with a range of obligations which work to that general objective. The main agreements that relate to country of origin labelling are discussed below.

General Agreement on Tariffs and Trade

5.5 The *General Agreement on Tariffs and Trade 1994*, (GATT) is the seminal agreement on the international trade in goods, and serves as an umbrella treaty for international trade under the World Trade Organisation (WTO).

5.6 The GATT establishes two fundamental trade law principles. Under these principles, and as a party to the GATT, Australia must not create unnecessary obstacles to trade, or give domestically produced goods an unfair advantage over imports (known as the national treatment principle) or, give imports of one country an unfair advantage over imports of another country (the most favoured nation principle).

5.7 Accordingly, parties to the GATT must ensure that imported goods are treated no less favourably than domestic goods and that any advantage accorded to goods originating in another country is extended to like products of all WTO members. Further, any regulation shall not be more trade-restrictive than necessary to fulfil a 'legitimate objective', as defined in Article 2.2 as follows:

Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.¹

5.8 Mr Ravi Kewalram, Assistant Secretary, Trade Law Branch, Department of Foreign Affairs and Trade, advised the Committee that consumer information provided through country of origin labelling 'is considered very clearly a legitimate subject for regulation'.² However, Mr Kewalram highlighted to the Committee that:

... the key thing with respect to the international obligations ... is whether the design and application of that regulation is even-handed in terms of as between importers or as between importers and domestic producers and not unnecessarily acting as obstacles to trade and so on. But there is no issue with the concept that

1 *General Agreement on Tariffs and Trade 1994*, Article 2.2. <www.wto.org/english/docs_e/legal_e/17-tbt_e.htm>, accessed 1 September 2014.

2 Mr Ravi Kewalram, Assistant Secretary, Trade Law Branch, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 8 May 2014, p. 15.

[country of origin labelling] is entirely consistent with our trade agreements.³

- 5.9 Similarly, Ms Lyndall Milward-Bason from the Department of Industry stated that the relevant test to assess Australia's regulations against its international obligations would be whether Australia was creating a barrier to trade or distorting trade.⁴
- 5.10 The GATT also provides that laws and regulations relating to the labelling of imported products shall not impact in a way that would materially reduce their value, or unreasonably increase their cost.⁵

Technical Barriers to Trade Agreement

- 5.11 The Technical Barriers to Trade Agreement (TBT Agreement) requires members of the WTO to ensure that:

... regulations, standards, testing and certification procedures do not create unnecessary obstacles, while also providing members with the right to implement measures to achieve legitimate policy objectives.⁶

- 5.12 Under the TBT Agreement, and as a member of the WTO, Australia's domestic regulations must not create unnecessary obstacles to trade, or give its domestic producers an unfair advantage over imports (the national treatment principle) or give the imports of a WTO member an unfair advantage over other members (the most favoured nation principle).⁷

Agreement on Rules of Origin

- 5.13 The Agreement on Rules of Origin requires members of the WTO to ensure:

- that their rules of origin are transparent;

3 Mr Ravi Kewalram, Assistant Secretary, Trade Law Branch, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 8 May 2014, p. 15.

4 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 17 July 2014, p. 4.

5 *General Agreement on Tariffs and Trade 1994*, Article 9.4. <www.wto.org/english/docs_e/legal_e/17-tbt_e.htm>, accessed 1 September 2014.

6 World Trade Organisation, *Overview of the Technical Barriers to Trade Agreement*, <www.wto.org/english/tratop_e/tbt_e/tbt_e.htm>, accessed 3 September 2014.

7 *Technical Barriers to Trade Agreement*, Article 2.1; see also World Trade Organisation, *Technical Barriers to Trade: Technical explanation - Non-discrimination and national treatment*, <www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm>, accessed 3 September 2014.

- that they do not have restricting, distorting or disruptive effects on international trade;
 - that they are administered in a consistent, uniform, impartial and reasonable manner; and
 - that they are based on a positive standard (stating what does confer origin rather than what does not).⁸
- 5.14 Though the Agreement on Rules of Origin aims at long-term harmonisation of the standards which would be applied by all WTO members, the WTO parties have yet to reach agreement on these standards.⁹

Codex Alimentarius Commission

- 5.15 Independent of the harmonisation effort under the Agreement on Rules of Origin, the Codex Alimentarius Commission (Codex) is an intergovernmental body developed to harmonise international food standards, guidelines and codes of practice to protect the health of consumers and ensure fair practices in the food trade.¹⁰
- 5.16 Australia has been a member of Codex since its founding in 1963.¹¹ The *Codex Alimentarius* contains the international standards dealing with the production and safety of food and as such is the international context for the *Australia New Zealand Food Standards Code*.¹²
- 5.17 Codex has developed over 300 codes of practice, guidelines, standards and other documents of 'standards' which collectively have become the global reference point for consumers, food producers and processors, national food control agencies and the international food trade.¹³

8 World Trade Organisation, *Rules of origin: made in ... where?* <www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm#origin>, accessed 2 September 2014; see also World Customs Organisation, *WTO Agreement on Rules of Origin*, <www.wcoomd.org/en/topics/origin/instrument-and-tools/comparative-study-on-preferential-rules-of-origin/specific-topics/general-topics/wto-topic.aspx>, accessed 2 September.

9 World Trade Organisation, *Rules of origin: made in ... where?* <www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm#origin>, accessed 2 September 2014.

10 Codex Alimentarius Commission, *International Food Standards*, <www.codexalimentarius.org/>, accessed 27 August 2014.

11 Codex Alimentarius Commission, *List of Codex Members*, <www.codexalimentarius.org/members-observers/members/en/?no_cache=1>, accessed 27 August 2014.

12 NSW Food Authority, *submission 45*, p. 6.

13 Codex Alimentarius Commission, *Understanding the Codex Alimentarius*, 3rd Edition, As published by World Health Organisation and Food and Agriculture Organisation of the United Nations, 2006, v; <www.codexalimentarius.org/about-codex/understanding-codex/en/>, accessed 1 September 2014.

- 5.18 The Codex General Standard for the Labelling of Pre-packaged Foods provides:
- The country of origin of the food shall be declared if its omission would mislead or deceive the consumer; and
 - When a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.¹⁴
- 5.19 Australia's regulation of country of origin labelling is considered by some industry groups as more onerous than international Codex provisions.¹⁵

Effect of obligations on the current regulatory framework

- 5.20 Consistent with these obligations, Australia's country of origin food labelling framework does not seek to prejudice foods from any particular country, or to favour goods produced in Australia.¹⁶ As explained in chapter two, neither the *Australia New Zealand Food Standards Code* (the Code) or the Australian Consumer Law (ACL) favour Australian products over imported products, and these regulations apply equally to imported and locally produced goods.
- 5.21 Yet as chapter four explains, there is significant confusion and consternation amongst consumers and industry about the current system, leading many stakeholders to call for a reform of the current system. Stakeholder reform proposals are addressed in chapter seven. Further, past reform proposals have attempted to address these concerns, however few have been accepted by past governments. In part these proposals have been rejected on the basis that, if proceeded with, Australia would be favouring its domestic producers in breach of its international obligations as outlined above (see chapter six).
- 5.22 On this point, the Department of Industry cautioned that:
- Any attempt to change the [current] framework to restrict trade or to 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.¹⁷

14 *General Standard for the Labelling of Prepackaged Foods* (CODEX STAN 1-1985), [4.5] <www.codexalimentarius.org/download/standards/32/CXS_001e.pdf>, accessed 27 August 2014.

15 Australian Industry Group, *submission 48*, p. 9.

16 Department of Industry, *submission 20.1*, p. 8.

17 Department of Industry, *submission 20.1*, p. 8.

Current WTO dispute regarding American origin labelling laws

- 5.23 This section provides an example of where a member of the WTO has amended its country of origin labelling requirements in an apparent breach of their obligations.
- 5.24 During the Inquiry, the Committee was advised of a matter in its final stages of the WTO dispute settlement process involving country of origin labelling. The dispute was brought against the United States of America by Mexico and an additional fourteen third parties, including Australia, Canada and New Zealand.¹⁸
- 5.25 The dispute concerns recent changes to America's country of origin labelling regulations as they apply to imported cattle and pigs which are subsequently used in the domestic production of beef and pork products in the United States. As the complainant, Mexico argued that the determination of the origin of these products deviates from international standards and which are not justified as necessary to fulfil a legitimate objective, therefore placing America in breach of the GATT, the Agreement on Rules of Origin and the TBT Agreement.¹⁹
- 5.26 The WTO's Appellate Body concluded in June 2012 that America's measures were inconsistent with its international trade obligations because it accorded less favourable treatment to imported livestock than to domestic livestock (in breach of the national treatment principle). The Appellate Body also found that the TBT Agreement:
- ... does not impose a minimum threshold level at which the measure must fulfil its legitimate objective; rather, it is the degree of the fulfilment that needs to be assessed against any reasonably available less trade-restrictive alternative measures.²⁰
- 5.27 Ms Milward-Bason of the Department of Industry advised that other countries are introducing a range of tariff lines and higher duties in retaliation for the trade-restricting regulation:
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18 World Trade Organisation, *Dispute Settlement: Dispute DS386 – United States – Certain Country of Origin Labelling Requirements*, 16 April 2014, <www.wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm#bkmk386r>, accessed 3 September 2014.

19 World Trade Organisation, *Dispute Settlement: Dispute DS386 – United States – Certain Country of Origin Labelling Requirements*, 16 April 2014, <www.wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm#bkmk386r>, accessed 3 September 2014.

20 World Trade Organisation, *Summary of Key Findings – US Country of Origin Labelling (DS384,386)*, <www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds386sum_e.pdf>, accessed 3 September 2014.

We know that some countries are getting into trouble. The US at the moment is very much in trouble for new rules that it has put in place that encourage its cattle producers not to buy cattle in from Mexico or Canada. At the moment, Canada has already put out a list of tariff lines that it will impose higher duties on in retaliation for that, and that is WTO permitted retaliation if it is found that whatever the US has done to fix that problem has not been successful. We are very wary of making any changes to [Australia's] framework that might lead to [similar] retaliation in that respect.²¹

5.28 Ms Milward-Bason advised that the case currently before the WTO between the United States and Mexico, is 'probably going to be fairly definitive in terms of where you cannot go'.²²

5.29 The WTO advises on its website that the 'Chair of the compliance panel ... expects to issue its final report to the parties towards the end of July 2014'.²³ At the time of writing, the report has not yet been made publicly available.

Food imports from New Zealand

5.30 A recurring theme of stakeholder concern and confusion throughout the inquiry was the status of food imports from New Zealand and the extent to which Australian law applies to those imports.

5.31 The Committee heard from multiple respected industry groups, consumer advocates and other organisations that their understanding of the current system was that food can be imported from New Zealand without a country of origin label.²⁴ The Committee found this to be a widespread misunderstanding of Australia's country of origin labelling system based

21 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 17 July 2014, p. 2.

22 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 17 July 2014, p. 4.

23 World Trade Organisation, *Dispute Settlement: Dispute DS386 – United States – Certain Country of Origin Labelling Requirements*, 16 April 2014, <www.wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm#bkmk386r>, accessed 3 September 2014.

24 NSW Farmers, *submission 40*, p. 9; CHOICE, *submission 47*, p. 9; Australian Food and Grocery Council, *submission 35*, p. 5; Australian Industry Group, *submission 48*, p. 9.

on an incomplete application of the complex legal arrangements between the two countries, chiefly, the Trans-Tasman Mutual Recognition Arrangement (TTMRA).

- 5.32 Contrary to common belief, foods imported into Australia from New Zealand must state their country of origin on their labels. The following section of the chapter will examine the TTMRA and the application of New Zealand labelling laws within Australia under the terms of that agreement.

What is the Trans-Tasman Mutual Recognition Arrangement?

- 5.33 The TTMRA is an arrangement between the Commonwealth, State and Territory Governments of Australia and the Government of New Zealand and 'is a significant step in developing an integrated trans-Tasman economy'.²⁵
- 5.34 Its purpose is to give effect to two mutual recognition principles relating to the sale of goods and the registration of occupations.²⁶ In the view of the New Zealand High Commissioner, His Excellency Mr Chris Seed, the TTMRA reduces regulatory barriers and costs of trade between the two countries; 'it is the world gold standard for mutual recognition'.²⁷
- 5.35 The first of two mutual recognition principles is relevant to this inquiry. Under the TTMRA, a good that may legally be sold in Australia may be sold in New Zealand, and a good that may legally be sold in New Zealand may be sold in Australia.²⁸
- 5.36 New Zealand does not have mandatory country of origin labelling. Rather, New Zealand law requires that if a claim to country of origin is made, that claim cannot be misleading or deceptive.²⁹ This is determined on an 'essential character test'. More information on New Zealand's domestic laws is provided later in this chapter.

25 Council of Australian Governments Committee on Regulatory Reform, *A User's Guide to the Trans-Tasman Mutual Recognition Arrangement*, May 1998, <www.dfat.gov.au/geo/new_zealand/ttmra_users_guide.pdf>, accessed 10 July 2014, p. 9.

26 Council of Australian Governments Committee on Regulatory Reform, *A User's Guide to the Trans-Tasman Mutual Recognition Arrangement*, May 1998, <www.dfat.gov.au/geo/new_zealand/ttmra_users_guide.pdf>, accessed 10 July 2014, p. 10.

27 His Excellency Mr Chris Seed, High Commissioner, New Zealand High Commission, *Committee Hansard*, Canberra, 29 May 2014, p. 1.

28 Council of Australian Governments Committee on Regulatory Reform, *A User's Guide to the Trans-Tasman Mutual Recognition Arrangement*, May 1998, <www.dfat.gov.au/geo/new_zealand/ttmra_users_guide.pdf>, accessed 10 July 2014, p. 10.

29 New Zealand High Commission, *Submission 49.1*, p. 1; New Zealand Commerce Commission, *The Fair Trading Act – Place of Origin Representations*, January 2012, p. 1.

- 5.37 The absence of mandatory country of origin labelling in New Zealand in combination with the provisions of the TTMRA as explained above, appears to have led many stakeholders to assume that foods imported into Australia from New Zealand are not required to state their country of origin. This is incorrect. There are key exceptions provided in the TTMRA, most notably the *Commerce (Trade Descriptions) Act 1905*.

The exception to the TTMRA: the *Commerce (Trade Descriptions) Act 1905*

- 5.38 The TTMRA allows food to be sold in Australia without meeting Standard 1.2.11 of the Code or the ACL, if it can be legally sold in New Zealand.³⁰

- 5.39 However, the *Commerce (Trade Descriptions) Act 1905* (CTD Act) is exempted from the operation of the TTMRA.³¹ The Department of Industry submitted:

The Commerce (Imports) Regulations 1940 made for the purposes of [the CTD Act] require all articles of food and beverages for human consumption to have affixed to them a trade description that includes the country in which it is made and produced. Under the [CTD Act] the trade description must not be false (or misleading). This means that Australian law still requires all food imported from New Zealand to be labelled with the country in which it is made or produced, and that such a label must not be false or misleading.³²

- 5.40 There was some confusion throughout the inquiry as to whether the CTD Act merely requires the customs documentation associated with the import to state its country of origin.³³ However, Ms Milward-Bason of the Department of Industry reassured the Committee that the CTD Act requires that food products must be physically labelled with a country of origin representation, that is on the food's packaging or on fresh produce stickers as appropriate, and not just on the entry documentation for Customs purposes.³⁴

30 Department of Industry, *submission 20.1*, p. 6.

31 *Trans-Tasman Mutual Recognition Act 1997*, Schedule 1 – Exclusions, Part 2. See also Department of Industry, *submission 20.1*, p. 6.

32 Department of Industry, *submission 20.1*, p. 6.

33 Mr Matthew Aileone, First Secretary, New Zealand High Commission, *Committee Hansard*, Canberra, 29 May 2014, p. 5.

34 Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard* Canberra, 17 July 2014, p. 1.

- 5.41 If a food product is imported into Australia from any country without a country of origin label on the product itself, Customs will find that that importer will be in breach of the CTD Act.³⁵ The penalty for importing goods with a false trade description is \$10 000.³⁶
- 5.42 Although foods imported from New Zealand must state their country of origin on the label when they reach Australian shores, the laws that govern the terms used on that label are those of New Zealand, not Australian laws as explained in chapter two. This is because of the mutual recognition arrangements under the TTMRA. Labelling laws in New Zealand are discussed below.

Country of origin labelling laws in New Zealand

- 5.43 As New Zealand has not adopted Standard 1.2.11 of the Code, New Zealand does not have mandatory country of origin labelling requirements for food.³⁷
- 5.44 The New Zealand High Commission in Australia explained the policy rationale for this approach:
- ... knowing the country of origin does not convey whether the food is safe or suitable. Rather, this is achieved by ensuring compliance with New Zealand's strict food safety and biosecurity laws.³⁸
- 5.45 Although the *Fair Trading Act 1986* (NZ) does not require any product to be labelled with a place of origin, where a product is labelled, any claims made about its origin must not be misleading or deceptive.³⁹ As described in chapter two, the ACL has an identical prohibition:
- ... however, unlike the [New Zealand] Act, the [Australian Consumer Law] includes safe harbour provisions for certain country of origin representations.⁴⁰
- 5.46 In New Zealand, food products are tested against the following question: 'where is the essential character of the food created?'.⁴¹ The New Zealand

35 Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard* Canberra, 8 May 2014, p. 11.

36 *Commerce (Trade Descriptions) Act 1905*, s 9(1).

37 New Zealand High Commission, *submission 49*, p. 1.

38 New Zealand High Commission, *submission 49*, p. 1.

39 *Fair Trading Act 1986* (NZ), s 13(j); New Zealand High Commission, *Submission 49.1*, p. 1.

40 New Zealand High Commission, *submission 49.1*, p. 1.

41 New Zealand High Commission, *submission 49.1*, p. 1; see also New Zealand Commerce Commission, *The Fair Trading Act – Place of Origin Representations*, January 2012, p. 1.

High Commission advised 'that there is no universal test to determine this and each case will turn on its own facts'.⁴² Mr Matthew Aileone, First Secretary at the New Zealand High Commission, explained how this system operates:

New Zealand [has] a complaints based system ... where if something is misleading you take it up with the Commerce Commission. We do take those complaints on a case-by-case basis, but in terms of food the key test in New Zealand is where the essential character of that food is added. On top of that there is also the jurisprudence in the case law in terms of complaints or any prosecutions that have taken place.⁴³

5.47 For commercial reasons, suppliers for the domestic New Zealand market will voluntarily include country of origin information on the label in most cases.⁴⁴ Where they choose to do so, those claims must be truthful and not misleading. According to the New Zealand High Commission, this means that if a food says 'Made in New Zealand', it must be just that.⁴⁵

5.48 The High Commission also advised that the New Zealand Commerce Commission will apply the following common law principles:

- where a significant step in the manufacturing process from raw materials to final product occurs overseas, it will not be appropriate to label the product 'made in New Zealand';
- significant differences in taste, appearance, and smell after the manufacturing process will be relevant in deciding whether a country of origin representation is misleading in the context of consumer goods; and
- the canning process alone is not the manufacturing process.⁴⁶

5.49 Understanding New Zealand law is important in the Australian domestic environment as these laws still apply in Australia once New Zealand food exports reach Australian shores. Although food imports from New Zealand into Australia must be physically labelled with a country of origin representation under the CTD Act, the TTMRA provides that it is New Zealand law that would govern what those representations may legally state. The following section explores this further.

42 New Zealand High Commission, *submission 49.1*, p. 1.

43 Mr Matthew Aileone, First Secretary at the New Zealand High Commission, *Committee Hansard*, Canberra, 29 May 2014, p. 3.

44 New Zealand High Commission, *submission 49*, p. 3.

45 New Zealand High Commission, *submission 49*, p. 3.

46 New Zealand High Commission, *submission 49.1*, p. 2.

Application of New Zealand domestic law in Australia

- 5.50 The TTMRA provides for the reciprocal extension of Australian and New Zealand laws into the jurisdiction of the other. Under the TTMRA, a good that may be legally sold in Australia may be sold in New Zealand, and a good that may legally be sold in New Zealand may be sold in Australia. Therefore, the labelling requirements established in New Zealand law will apply to the point of sale of the good in Australia.
- 5.51 In practice, this would mean that if a can of soup was imported into Australia from New Zealand, the laws that would govern what representations could be made to declare its origin (as required under the CTD Act), would be the New Zealand ‘essential character’ test and the prohibition of misleading or deceptive provided in the *Fair Trading Act 1986* (NZ).
- 5.52 Therefore, if the soup were to be labelled as ‘Made in New Zealand’, it would have to satisfy the ‘essential character’ test so as to not be misleading or deceptive to Australian consumers. The soup would not be subject to the ACL and the established safe harbours as explained in chapter two.
- 5.53 However, should a food product not satisfy the requirements of New Zealand law, the TTMRA provisions would not apply and those foods would be subject to Australian regulation (principally the ACL) as described in chapter two.⁴⁷
- 5.54 At a public hearing, Ms Milward-Bason from the Department of Industry explained how this will operate in practice:

New Zealand itself has laws about misleading or deceptive false origin claims. So, if you have made a false origin claim on a product that comes into Australia from New Zealand, if that product could not be sold in New Zealand safely then it cannot be sold in Australia, and then it does become subject to our laws. If you had a product that said ‘Made in New Zealand’ and it was obviously from China then you would not be able to say ‘Made in New Zealand’ and get away with it in Australia because you would not be able to sell that product legally in New Zealand with that label, and so you could not sell it legally in Australia with that label. And the Consumer Law would then come into play.⁴⁸

47 Department of Industry, *submission 20*, p. 7.

48 Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 10.

- 5.55 The myth that foods imported into Australia from New Zealand do not require a country of origin statement appear to also have fostered concerns among consumer and industry groups that Australian laws are being circumvented by importers staging their products in New Zealand prior to final importation into Australia. These concerns are addressed below.

Staging of food imports in third countries

- 5.56 The Committee was specifically tasked in its terms of reference to examine whether Australia's country of origin labelling laws are being circumvented by staging imports through third countries. A number of stakeholders raised this as a concern throughout the inquiry,⁴⁹ however, despite many requests by the Committee, specific examples of this practice were not received at any stage during the inquiry.
- 5.57 The question of whether Australia's laws were being circumvented by importers 'staging' their products in New Zealand before importing them into Australia under TTMRA, appears to have been first raised during an inquiry by the Senate Select Committee on Australia's Food Processing Sector in 2012.⁵⁰ The Senate Select Committee subsequently recommended to the ACCC that it investigate the claim.⁵¹
- 5.58 During this current inquiry, a number of stakeholders echoed the concerns raised in the Senate Select Committee's inquiry.⁵² These concerns are heightened by the practice of consumers using country of origin labelling as indicators of food safety as explained in chapter four.
- 5.59 For example, AUSVEG asserted that it was informed from sources in New Zealand that China was exporting fresh produce to New Zealand, adding local seasoning and packaging that produce. That packaged product was then exported into Australia under a label 'Made in New Zealand' or

49 Australian Made Campaign Limited, *submission 18*, p. 13;
Australian Honey Bee Industry Council Inc, *submission 15*, p. 3;
AUSVEG, *submission 39*, p. 5;
AUSBUY, *submission 13*, p. 21.

50 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, tabled 16 August 2012.

51 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, tabled 16 August 2012, Recommendation 13.

52 Australian Made Campaign Limited, *submission 18*, p. 13;
Australian Honey Bee Industry Council Inc, *submission 15*, p. 3;
AUSVEG, *submission 39*, p. 5;
AUSBUY, *submission 13*, p. 21.

'Made in New Zealand from local and imported product'.⁵³ AUSVEG concluded on these reports that 'New Zealand is a genuine backdoor for imported foods into Australia'.⁵⁴

- 5.60 In the absence of direct evidence of the practice provided during this inquiry, this Committee sought specific answers from the ACCC as to whether it has received evidence of the practice, and if so, what investigations it may have commenced. The ACCC responded:

The ACCC understands that the Committee has heard allegations that food may be imported through New Zealand and be sold in Australia with no country of origin claim at all or that food may be imported into New Zealand, repackaged and exported to Australia for sale but labelled 'Made in New Zealand'. It is not entirely clear to the ACCC how the concerns of regulatory gap might arise in circumstances where both Australian and equivalent New Zealand laws both prohibit false or misleading representations.

The ACCC notes the Senate Select Committee on Australia's Food Processing Sector recommendation that the ACCC investigate claims, when presented with direct evidence, that country of origin labels on processed foods imported into Australia under free trade and other international agreements are misleading. The ACCC has received a very small number of contacts about this issue. Those contacts were considered by the ACCC although not pursued due to insufficient evidence of a breach of the law.⁵⁵

- 5.61 The NSW Food Authority similarly stated that it is not in possession of evidence that Australian country of origin labelling laws are being circumvented.⁵⁶
- 5.62 Responding to these claims, the New Zealand High Commission advised:
- If Australian authorities suspect that a product imported into Australia from New Zealand under TTMRA is labelled in a misleading manner or have any other concerns, they can contact the New Zealand Ministry for Primary Industries or the New Zealand Commerce Commission.⁵⁷

53 AUSVEG, *submission 39*, p. 5;

Mr Richard John Mulcahy, Chief Executive Officer, AUSVEG, *Committee Hansard*, Sydney, 9 May 2014, p. 3.

54 AUSVEG, *submission 39*, p. 5.

55 ACCC, *submission 41.1*, p. 2.

56 NSW Food Authority, *submission 45*, p. 6.

57 New Zealand High Commission, *submission 49*, p. 3.

Committee comment

Australia's international trade obligations

- 5.63 As a significant food exporter, Australia has strong interests in ensuring compliance with international trade obligations including those relevant to country of origin labelling. Indeed, a diverse range of stakeholders⁵⁸ expressed their strong support for Australia to maintain compliance with its international trade obligations and opposed any reform proposals that would adversely impact the international trade of Australian goods and products.
- 5.64 However, the agreements which govern this free and fair access may nonetheless shape the parameters of Australian reform proposals. As stated above, country of origin labelling is considered as a legitimate objective for regulation, however, that regulation cannot favour domestic producers over importers, nor favour imports from one nation over another. Further, that regulation must not create unnecessary obstacles to trade in fulfilling that legitimate objective.
- 5.65 The Committee again reinforces the benefits that come with participating in the international trading system. This report proceeds on the understanding that Australia's international obligations are to be upheld and the Committee's recommendations are made on that basis.
- 5.66 The Committee awaits the outcome of the WTO matter brought by Mexico against the United States, as it is sure to guide future debates and reform proposals in Australia as well as internationally.

Food imports from New Zealand

- 5.67 Further comments and a recommendation can be found in chapter seven of the report.

Staging of food imports in third countries

- 5.68 The Committee received no specific evidence that food imports are being staged in New Zealand or any other country that would lead to Australia's laws being circumvented. Similarly, the ACCC has not

58 Citrus Australia – SA Region, *submission 28*, p. 5;
Australian Food and Grocery Council, *submission 35*, p. 5;
AUSVEG, *submission 39*, p. 5;
National Farmers' Federation, *submission 42*, pp. 6-7;
NSW Food Authority, *submission 45*, p. 6;
CHOICE, *submission 47*, p. 9;
Australian Industry Group, *submission 28*, p. 9;
Tasmanian Farmers and Graziers Association, *submission 51*, p. 5.

received evidence of this practice that would lead it to investigate the matter.

- 5.69 Though there are repeated reports of imports being staged in third countries so to avoid Australia's labelling requirements, these claims are thus far, unsubstantiated. The Committee is satisfied that the ACCC has the appropriate powers to investigate such claims, and will do so where there is sufficient evidence to warrant such action.
- 5.70 The Committee takes this opportunity to remind consumers and industry representatives that, if there are genuine concerns about false, misleading or deceptive conduct, the ACCC is the appropriate body with which to raise these issues.

Previous reform proposals

- 6.1 Previous chapters of this report examined the current regulatory framework (chapter two) and the confusion amongst consumers and food producers (chapter four). That consumers and food producers are confused to the levels reported in chapter four indicates that a system which is designed to inform and guide these stakeholders is not meeting its stated objectives.
- 6.2 The Department of Health stated that the key priorities for the food regulation and labelling system relate to public health and safety, and enabling consumers to make informed food purchases.¹
- 6.3 The Australian Made Campaign Limited (AMCL) stated that an effective country of origin labelling system is one that is trusted and understood by consumers and business, adding that:
- ... changes can and should be made to the current legislative framework to ensure that the requirements of different country of origin claims are both clarified and made more stringent in relation to food.²
- 6.4 Country of origin food labelling has been the topic of many public reviews as well as a multitude of unsuccessful legislative reform attempts in the past decade. Table 4.1 chronologically lists these reviews and reform attempts.

1 Ms Kathy Dennis, Assistant Secretary, Healthy Living and Food Branch, Population Health Division, Department of Health, *Committee Hansard*, Canberra, 8 May 2014, p. 2.

2 Mr Ian Harrison, Chief Executive, Australian Made Campaign Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 25.

Table 6.1 Reviews and reform attempts of country of origin food labelling

Date	Inquiry
2003	
October	Senate Inquiry into Truth in Food Labelling Bill 2003; inquiry launched [primarily dealing with GM foods]
2004	
March	Senate Inquiry into Truth in Food Labelling Bill 2003; report tabled
2009	
September	Inquiry into the Food Standards Amendment (Truth in Labelling Laws – Palm Oil) Bill 2009; inquiry launched
October	Review of Food Labelling Law and Policy launched; chaired by Dr Neil Blewett AC (Blewett Review)
November	Inquiry into the Food Standards Amendment (Truth in Labelling Laws) Bill 2009; report tabled
2011	
January	Blewett Review released: <i>Labelling Logic</i> - The Final Report of the Review of Food Labelling Law and Policy
March	Senate Select Committee on Australia's Food Processing Sector; inquiry launched
December	Government response to Blewett Review released
2012	
August	Senate Select Committee on Australia's Food Processing Sector; report tabled [chapter 4 and dissenting report address food labelling]
September	Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) [Senator Milne] and referred to Senate Rural and Regional Affairs and Transport Committee
2013	
March	Inquiry into Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) report tabled

6.5 Of those reviews and reform attempts listed above, this Chapter will discuss the most recent:

- the Blewett Review (*Labelling Logic*);
- the Food Standards Amendment (Truth in Labelling Laws) Bill 2009;
- the Senate Select Committee on Australia's Food Processing Sector; and
- the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012.

6.6 The chapter concludes with a summary of key areas of public concern arising during these inquiries, recommended areas of reform from the inquiries and apparent difficulties with previous reform proposals.

Labelling Logic - the Blewett Review

- 6.7 A significant review of food labelling law and policy commenced in 2009 (following a COAG announcement), and was chaired by former federal Minister for Health, Dr Neal Blewett AC. The review's terms of reference included examining policy drivers impacting on demands for food labelling. The final report was presented to government in January 2011, and released publicly.³
- 6.8 Of 61 recommendations concerning food labelling in general, three related to country of origin food labelling:
- that Australia's existing mandatory country of origin labelling requirements for food be maintained and be extended to cover all primary food products for retail sale (Recommendation 40)⁴;
 - that mandatory requirements for country of origin labelling on all food products be provided for in a specific consumer product information standard for food under the *Competition and Consumer Act 2010* rather than in the Food Standards Code (Recommendation 41)⁵; and
 - that for foods bearing some form of Australian claim, a consumer friendly, food-specific country of origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed (Recommendation 42)⁶.

Government response

- 6.9 In its response, the Australian Government supported recommendation 40 and has subsequently extended country of origin food labelling requirements to cover almost all primary food products (see chapter two). However, the Australian Government did not support recommendations 41 and 42.
- 6.10 Mr Steve McCutcheon, Chief Executive Officer of Food Standards Australia New Zealand, discussed recommendation 40:
- So there are a number of meat species that are not covered – from kangaroo meat to rabbit and all those sorts of things. One of the recommendations out of the Blewett labelling review, and subsequently responded to by governments, was to basically look

3 *Labelling Logic: Review of Food Labelling Law and Policy* (2011), available at www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/labelling-logic

4 *Labelling Logic: Review of Food Labelling Law and Policy* (2011), [6.38].

5 *Labelling Logic: Review of Food Labelling Law and Policy* (2011), [6.39].

6 *Labelling Logic: Review of Food Labelling Law and Policy* (2011), [6.45].

at what other primary foods were not covered by the standard. FSANZ has been developing a response to that recommendation and that will then be going to ministers for them to decide whether they want to go any further.⁷

- 6.11 When asked about certain products outside the parameters of country of origin labelling, Mr McCutcheon stated the key drivers are costs imposed on industry and the cost compared to the benefits to consumers:

With a lot of those minor species, it is a very small part of the market. A lot of those sorts of meats are sold through restaurants and the like, where you do not require country of origin labelling. Clearly some meats are Australian. With others, the cost for a manufacturer or a retailer to impose a country of origin labelling requirement would probably exceed the benefits to that very small part of the community who would be looking at it. That said, there is nothing stopping companies from doing it voluntarily. Again, some of our research over the years has shown, particularly for some of the mainstream meats – like beef, for example – that the big supermarkets have had country of origin labelling on those for a long time voluntarily.⁸

- 6.12 In response to recommendation 41, regarding a single regulatory framework, the Australian Government stated this ‘should not be pursued at this time’ and that ‘further internal consideration’ would be conducted before deciding to pursue any changes to the *Competition and Consumer Act 2010*.

- 6.13 Recommendation 42 was not supported on the basis of ‘practical difficulties with adopting a new framework’. However, a commitment was given to:

... review existing ... materials (including publications, guidelines and other educational material) in a consultative process and, if appropriate, develop an education campaign with the specific objective of clarifying country of origin food labelling.⁹

7 Mr Steve McCutcheon, Food Standards Australia New Zealand, *Committee Hansard*, Canberra, 8 May 2014, p. 12.

8 Mr Steve McCutcheon, Food Standards Australia New Zealand, *Committee Hansard*, Canberra, 8 May 2014, p. 12.

9 Legislative and Governance Forum on Food Regulation, (convening as the Australia and New Zealand Food Regulation Ministerial Council), *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, (2011), p. 45.

Food Standards Amendment (Truth in Labelling Laws) Bill 2009

- 6.14 In August 2009, the Food Standards Amendment (Truth in Labelling Laws) Bill 2009 was introduced into the Senate by Senator Nick Xenophon, and co-sponsored by Senator Barnaby Joyce (then Nationals leader in the Senate) and Senator Bob Brown (then Greens leader in the Senate). The Bill immediately proceeded to the second reading and speeches were incorporated.
- 6.15 In his comments, Senator Joyce observed that the system is ‘deliberately obtuse’ pinpointing the significant consumer confusion reported in chapter three of that report.¹⁰ To correct this, the Bill’s intent was to limit the use of the word ‘Australian’ on food labels to foods which are 100 per cent produced in Australia. To assist consumers, the Bill would have required any goods with one or more imported ingredients, to have information displayed on a front label.¹¹ The Bill would have also introduced specific regulation for fruit juices and drinks.

Senate Economics Committee inquiry

- 6.16 In September 2009, the provisions of the Bill were referred to the Senate Economics Legislation Committee, chaired by Senator Annette Hurley (ALP, South Australia). The inquiry ran concurrently with the Blewett Review. Supporters and critics of the Bill stated that the issue of reforms to country of origin food labelling would be more appropriately addressed through that process. The Senate Committee made similar observations.
- 6.17 Concerns were expressed about the proposed 100 per cent rule, by a disparate range of stakeholders including the Australian Food and Grocery Council, the Australian Dairy Industry Council, Simplot Australia, the National Farmers’ Federation, AUSVEG, AMCL, CHOICE, and Dick Smith Foods.¹² For example, AMCL stated that they had major concerns about the 100 per cent rule, commenting that:

... the proposal, however well-intended, will cause further confusion for consumers and have the effect of disadvantaging a large number of genuine Australian manufacturers by precluding

10 Senator Barnaby Joyce, Second Reading Speech, *Senate Hansard*, 20 August 2009, p. 5499.

11 Food Standards Amendment (Truth in Labelling Laws) Bill 2009, *Explanatory Memorandum*, p. 2.

12 Senate Economics Legislation Committee, *Report on the Food Standards Amendment (Truth in Labelling Laws) Bill 2009*, November 2009, pp. 31-33.

them from using legitimate country of origin claims on their products.¹³

6.18 The AMCL explained that most, if not all, cheese made in Australia is made with imported rennet and that under this proposal, cheese made in Australia from 100 per cent Australian milk could not be labelled as an Australian product.¹⁴

6.19 In its November 2009 report, the Committee concluded that the 100 per cent rule would be impractical, setting an unrealistic threshold¹⁵, and recommended that the Bill not be passed. The Senate Committee commented that it was:

... inconsistent with the current food standards setting arrangements [and] effectively short-circuits established processes which have been nationally agreed through the Council of Australian Governments.¹⁶

Senate Select Committee on Australia's Food Processing Sector

6.20 In March 2011, the Senate established the Senate Select Committee on Australia's Food Processing Sector (the Select Committee) to review a range of matters relating to food processing in Australia, including country of origin food labelling. The Select Committee was chaired by Senator the Hon Richard Colbeck, a Liberal Senator from Tasmania.

6.21 The Select Committee's report, tabled in August 2012, made the following recommendations in relation to country of origin labelling:

- that country of origin labelling be reformed to be more clear, transparent and focused on consumers' understandings and expectations;
- extending country of origin food labelling to all packaged and unpackaged food for retail sale (enacting Recommendation 40 of the Blewett Review);
- consolidating country of origin food labelling regulation into the *Competition and Consumer Amendment Act 2010* (enacting Recommendation 41 of the Blewett Review);

13 Australian Made Campaign Limited, *Submission to Senate Economics Committee*, p. 4.

14 Australian Made Campaign Limited, *Submission to Senate Economics Committee*, p. 2.

15 Senate Economics Legislation Committee, *Report on the Food Standards Amendment (Truth in Labelling Laws) Bill 2009*, November 2009, p. 37.

16 Senate Economics Legislation Committee, *Report on the Food Standards Amendment (Truth in Labelling Laws) Bill 2009*, November 2009, p. 29.

- that the Government review the *Competition and Consumer Act 2010* broadly, and whether 'safe harbour' provisions in section 255 are 'sufficiently focussed on the consumer's understanding of country of origin claims on food products';
- that the ACCC investigate claims that country of origin labelling laws are being circumvented by staging imports through third countries, specifically under free trade agreements;
- that the Government consult with industry about the use of the term 'defining ingredient' as a method of determining country of origin of a food product; and
- that smart phone and barcode technology be used to provide additional information about country of origin.¹⁷

6.22 In making these recommendations, the Select Committee commented that the labelling system could be overhauled:

... there are flaws in Australia's current country of origin labelling system ... The committee's view is that there would be merit to reforming the current country of origin labelling laws to make them more transparent ... the focus of country of [origin] labelling laws should be on the consumer's understanding. This means that, first and foremost, claims about the country of origin of a product should be clear and not misleading.¹⁸

6.23 The Select Committee also observed that any proposed labelling regime changes should encompass all food types:

... there should be a level playing field across all foods. The current anomalies, [that] allow some foods to escape such labelling altogether, appear illogical and are unacceptable.¹⁹

6.24 Government Senators submitted a dissenting report on a variety of matters including bio-security issues and workforce issues, however their report did not dissent on the recommendations list above regarding country of origin labelling.

Government response

6.25 At the time of writing, there had been no response to the Select Committee's recommendations.²⁰ The advice released in December 2013 is

17 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, August 2012.

18 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, August 2012, pp. 87-89.

19 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, August 2012, p. 87.

that the Government response is being considered and will be tabled in due course.²¹

Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)

6.26 In September 2012, the Leader of the Australian Greens, Senator Christine Milne introduced the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) (the Milne Bill), which sought to amend the *Competition and Consumer Act 2010* in particular by implementing the two remaining Blewett recommendations:

- a single regulatory regime under the *Competition and Consumer Act 2010* rather than in the Food Standards Code (recommendation 41); and
- that the country of origin labelling framework should be based on the ingoing weight of the ingredients and components (excluding water) (recommendation 42).

6.27 The Explanatory Memorandum states that a food labelling system based on origin of ingredients would allow Australians to know the origin of the food they are buying, rather than where it was processed and packaged.²²

6.28 In so doing, the Bill would have removed the stand-alone classification of 'Made in Australia'. The Bill retained the 'Grown in Australia' classification and its requirements, but introduced a new standard: where packaged food is made from 90 per cent or more Australian ingredients by total weight excluding water, it must be labelled 'Made of Australian Ingredients'.²³

Senate Rural and Regional Affairs Committee inquiry

6.29 In September 2012, the provisions of the Milne Bill were referred to the Senate Rural and Regional Affairs and Transport Legislation Committee, chaired by Senator Glenn Sterle (ALP, Western Australia).

6.30 In its March 2013 report, the Committee noted significant support for 'better country of origin labelling for Australian food', primarily arising

20 *Presidents Report to the Senate on Government responses outstanding to Parliamentary Committee reports as at 16 July 2014.*

21 *Government Response to Parliamentary Committee Reports – Response to the schedule tabled by the President of the Senate on 27 June 2013, tabled in the Senate on 11 December 2013.*

22 *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012, Explanatory Memorandum, p. 2.*

23 *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012, Explanatory Memorandum, p. 2.*

from a desire to support local producers and industries, as well as the belief that current labelling terminology and standards are confusing or misleading.²⁴

- 6.31 The Committee reported that some peak bodies (particularly those representing primary producers such as the Horticulture Taskforce) argued that Australia would be better served by a *new* country of origin labelling system rather than education campaigns informing consumers about the current framework.²⁵
- 6.32 Other peak bodies supported the Bill's intention, but not its method. For example, the AMCL, Growcom, and the Australian Seafood Industry Alliance all applauded the Bill's underlying intention, but argued that the Bill needed to be further developed.²⁶
- 6.33 Criticisms of the Milne Bill fell into four main categories:
- the Bill did not distinguish between packaged and non-packaged goods sufficiently and had the potential to create loopholes for imported fresh goods processed and packaged in Australia;
 - the Bill did not sufficiently define 'substantially transformed', with many stakeholders commenting that this term is also insufficiently defined in the current legislation;
 - the threshold of 90 per cent excluding water from the term 'Made of Australian ingredients' does not accommodate some industries where water is a defining part of the produce, particularly the brewing industry; and
 - compliance with the Bill may negatively affect Australia's manufacturing sector.²⁷
- 6.34 Opponents of the Milne Bill advocated for a more effective public campaign to increase awareness of the terminology and provisions of current country of origin labelling arrangements, rather than an overhaul

24 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 9.

25 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 9.

26 Australian Made Campaign (Limited), *submission 12 to the Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, pp 1-8;

Growcom, *submission 13 to the Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, pp. 3 and 7;

National Seafood Industry Alliance, *submission 23 to the Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, pp. 1-3.

27 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, pp. 14-15.

of the existing legislative framework.²⁸ Coles, the Australian National Retailers Association, the Brewers Association, and the Australian Food and Grocery Council were among stakeholders that opposed the Bill.

- 6.35 During its inquiry, the Senate Committee also explored the suggestion of creating a 'negative list' which would codify what processes would *not* meet the threshold to claim substantial transformation of goods had occurred in Australia.²⁹ AMCL and CHOICE supported the development of a negative list, however more sceptical views were expressed by the government departments.³⁰

Senate Committee recommendation and conclusion

- 6.36 The Senate Committee recommended that the Milne Bill, as drafted, should not pass the Senate.³¹ In making this recommendation, the Committee also commented:

The committee understands that Australian consumers have a substantial appetite for more information about where the food they buy is grown, processed and manufactured. However, the committee has seen in this inquiry that although support for the intention of the bill is substantial, support for the substance of the amendments is not. The committee is of the view that the proposed amendments need further consideration and work.³²

- 6.37 However, the Senate Committee made the additional recommendation that government should consider developing a more effective country of origin framework (including a more effective definition of 'substantially transformed'), which better balances the interests of consumers, primary producers and manufacturers.³³
- 6.38 The Senate Committee subsequently recommended that, upon the development and implementation of a *new* country of origin labelling

28 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 26.

29 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 19.

30 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, pp. 19-21.

31 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, Recommendation 1, p. 14.

32 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 14.

33 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, Recommendation 2, p. 19.

system, the government develop a corresponding public education campaign for the new guidelines.³⁴

6.39 The Senate Committee also agreed that the Milne Bill would have left:

... a loophole for processed packaged goods and, moreover, that they do not sufficiently recognise the distinction between packaged and non-packaged fresh food.³⁵

6.40 The Senate Committee concluded that the Milne Bill as drafted could have negatively impacted Australian industry and manufacturers. However, it also commented that if the Milne Bill were to be improved to 'meet the needs of consumers, producers and manufacturers' as it recommended, these negative impacts could be negated or minimised.³⁶

6.41 The Senate Committee also made a recommendation on the tangential issue of a negative list:

The committee recommends the government consider the potential benefits and drawbacks of creating a 'negative list' for processes that do not satisfy the 'substantial transformation' test for [country of origin labelling] purposes.³⁷

Progress of the first Milne Bill and the Senate Committee's recommendations

6.42 In additional comments to the Senate Committee's March 2013 report, Senator Milne stated an intention to 'forward new legislation based on the valuable feedback received through this inquiry'.³⁸ The Bill was discharged from the Senate Notice Paper on 15 May 2013.

6.43 The Senate Committee's recommendations 2 to 4 (recommending a more effective country of origin labelling system, a subsequent education campaign and the development of a negative list) are held to require a

34 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, Recommendation 4, p. 28.

35 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 16.

36 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 26.

37 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, Recommendation 3, p. 21

38 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 29.

government response, however at the time of writing, none had been reported by the Senate Committee.³⁹

Proposed re-introduction of legislation by Senator Milne

6.44 On 10 April 2014, Senator Milne advised this Committee of her intention to introduce a revised Bill: the Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2014 (the Second Milne Bill). At the time of writing, this had not yet occurred.

Key areas of public concern from earlier inquiries

- 6.45 Some commonly-expressed areas of concern during the inquiries described above include:
- whether Australia was the country of origin for all, some part or none of the ingredients or components of the food concerned;
 - whether all, some part or none of the processes involved in the production or manufacture of food occurred in Australia;
 - how to measure the percentage of the food that originated or was processed in Australia (for example by weight, volume or value);
 - whether measurement should include components or ingredients of the food product that are not part of the nature of the product (such as a preservative or the product's packaging);
 - how to manage variations in the Australian content of a particular food product arising from, for example, seasonal variations in the supply of ingredients or changes in their costs arising from fluctuations in exchange rates;
 - the effect on consumers of the wide variety of words and graphics on labels that relate to country of origin, and how the size and placement of these labels influences the interpretation of this information;
 - how country of origin labelling requirements interact with other food labelling requirements;

39 According to the President's Report to the Senate on Government Responses Outstanding to Parliamentary Committee Reports, dated 12 December 2013: Senate committees report on Bills and the provisions of Bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the Bill, and therefore require a response, are listed (see www.aph.gov.au/~media/02%20Parliamentary%20Business/24%20Committees/242%20Senate%20Committees/out_gov_response.pdf), accessed on 9 April 2014).

- whether any particular aspect of country of origin food labelling is best addressed through legislative instruments, regulations, national standards, voluntary codes, or some combination of any of these mechanisms;
- whether country of origin food labelling requirements should apply equally to all sectors of the food industry, or whether some sectors should be subject to more stringent standards; and
- what impact country of origin food labelling requirements have on production processes, and what impact will they have on the cost of the food products concerned.⁴⁰

Recommended areas of reform from earlier inquiries

6.46 Throughout the course of the inquiries discussed in this chapter, some common areas of reform have been identified and are listed below:

- **all primary food products** for retail sale to display their country of origin
 - ⇒ Blewett Review recommendation 40;
 - ⇒ Senate Select Committee, recommendation 7;
 - ⇒ Senator Milne's (revised) Bill, and supported by the subsequent inquiry by Senate Rural and Regional Affairs Committee;
- **a single regulatory system** for Country of origin food labelling within the *Competition and Consumer Act 2010*
 - ⇒ Blewett Review, recommendation 41;
 - ⇒ Senate Select Committee, recommendation 12;
 - ⇒ Senator Milne's Bill;
- **a new and clearer system of food labelling** that would be more in line with consumers' expectations and understandings of those designations
 - ⇒ Blewett Review (which recommended an ingoing weight calculation), recommendation 42;
 - ⇒ Senate Select Committee, recommendations 8, and 10;
 - ⇒ Senators Xenophon, Joyce and Brown's Bill (via redefining the content requirements of 'Australian Made' designations);

40 These concerns have been compiled from previous inquiries, media articles and general public debate.

- ⇒ Senator Milne's Bill (which would have introduced an ingoing weight calculation) (the Senate RRA Committee supported a new, clearer system but believed the Bill as drafted, needed more work).

Apparent difficulties with previous reform proposals

- 6.47 Throughout the course of the inquiry, the Committee attempted on numerous occasions to explore the challenges posed by the complexity of the issues falling to the jurisdiction of many government departments and agencies, and the apparent consequent difficulty of establishing a single regulatory regime.
- 6.48 In addition to this overall challenge, the Committee identified three areas where obstacles may have been encountered.

'Do no harm'

- 6.49 The Blewett Review recommended that for foods bearing some form of Australian claim, a consumer friendly, food-specific country of origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed (Recommendation 42). Based on evidence received during the Committee's inquiry, a reform proposal which would specifically target food products with Australian content would likely place Australia in breach of its international trade obligations. These obligations are currently met by applying the requirements in the ACL to all country of origin claims, not simply Australian content. Further, food producers also raised concerns ('do no harm').

Constitutional limitations

- 6.50 The two central pieces of legislation at the heart of Australia's food labelling system – the Code (enabled by the FSANZ Act) and the ACL – are implemented by state and territory governments by those jurisdictions enacting these codified Commonwealth Acts within their own laws as determined in various COAG Agreements.
- 6.51 These concerns have been raised by Government Departments and agencies in parliamentary inquiries into the various Bills discussed above. For example, FSANZ commented in relation to the Food Standards Amendment (Truth in Labelling) Bill 2009:
- ... the FSANZ Act is enabling legislation designed to provide FSANZ with powers to develop food standards within the Commonwealth, state and territory government framework of the

Food Regulation Agreement and the Australian government treaty with New Zealand. The FSANZ Act has, of itself, no effect on state or territory food law due to constitutional restraints. The adoption, monitoring and enforcement of the standard are dependent on states and territories placing the standard into their law, meeting the conditions of their agreement with the Commonwealth. Therefore, a standard developed in accordance with the proposed section 16A of the Food Standards Amendment (Truth in Labelling Laws) Bill 2009 is not likely to become law as states and territories are not bound to adopt something that is developed outside of the current framework. The FSANZ Act, the Food Regulation Agreement and our treaty with New Zealand do not contemplate a process whereby the Commonwealth can unilaterally impose a law on the states, territories and New Zealand.⁴¹

Regulation must be 'country neutral'

- 6.52 For Australia to comply with its international trade obligations to provide open markets, a proposal which would provide an advantage to Australian content would be likely to be seen to breach those obligations.
- 6.53 Complementary to this, current arrangements are drafted in such a way as to be 'country neutral' – that is, any product that states its country of origin is assessed against the same test under the ACL, regardless of whether it contains Australian ingredients or imported ingredients.

41 Mr Stephen McCutcheon, Chief Executive Officer, Food Standards Australia New Zealand, at hearing of Senate Economics Committee, *Committee Hansard*, Canberra, 30 October 2009, p. 17.

Proposed solutions and improvements

- 7.1 The final chapter of the report examines proposed solutions or improvements for country of origin food labelling. The chapter discusses the need for change and considers the important issue of separating the ingredients from the place of manufacture. The chapter also explores the sensitive issue of identifying specific countries that are the source of imported ingredients used in products manufactured in Australia.
- 7.2 Labels are discussed in detail, referring to the use of symbols and text characteristics in accurately presenting country of origin information. The chapter briefly considers a call for a ministerial taskforce to be established to examine country of origin labelling issues and discusses education programs and their role in raising awareness of labelling claims. Finally, a short section examines the use of bar codes to provide country of origin labelling detail.

Is change needed?

- 7.3 Many submissions to the inquiry called for changes to the current labelling system, with many providing substantial comment and specific recommendations for change.
- 7.4 AUSVEG, in its submission, described reforms in this area as 'one of the most disappointingly drawn-out areas of policy development', noting consideration by successive governments, and a high profile since 2000:
- A significant amount of sustained effort over many years has produced a system that, while not perfect, is at least in place. This system would benefit greatly from minor changes which would likely incur little opposition given they would ultimately result in

clearer country of origin labelling laws – a widely-supported outcome.¹

- 7.5 The Australian Manufacturing Workers Union (AMWU) sees reform as essential and a relatively straightforward step to ensure the safety of Australian food and to enhance competition in the food industry by empowering consumers.² Australian Made Campaign Limited (AMCL) believes that while it is not feasible to meet all consumer expectations, changes can and should be made to the current legislative framework to ensure that the requirements for the different country of origin claims are clarified and made more stringent in relation to food.³
- 7.6 The National Farmers' Federation outlined its labelling guiding principles:
... labelling laws must be practical to implement, provide consumers with an understanding of where the products comes from, not impose unreasonable costs, and must not lead to adverse trade implications.⁴
- 7.7 Australian Pork Limited, working closely with the National Farmers' Federation, has developed an agreed position on food labelling and principles to underpin the basis of any revised system. An improved food labelling system should:
- be simple, consistent and easy to understand;
 - align with Australia's trade obligations and trade liberalisation credentials;
 - be minimum cost and practical to implement;
 - ensure made in claims are qualified;
 - include clearly defined tests;
 - include clear pack labelling; and
 - be mandatory.⁵
- 7.8 Mr Timothy Piper, Director (Victoria) of the Australian Industry Group (AIG), was more cautious about sweeping changes to the current system, suggesting that wholesale changes are not necessary:
- We think that any changes would need to pragmatically and cost-effectively provide consumers with better information. We acknowledge the complexity of country-of-origin labelling; however, any changes to the labelling measures need to strike the

1 AUSVEG, *submission 39*, p. 2.

2 Australian Manufacturing Workers Union, *submission 22*, p. 1.

3 Australian Made Campaign Limited, *submission 18*, p. 1.

4 National Farmers' Federation, *submission 42*, p. 5.

5 Australian Pork Limited, *submission 6*, p. 3.

balance between consumer interest and support of the Australian food industry and minimise the compliance burden ...⁶

- 7.9 The Tasmanian Farmers and Graziers Association recommended caution in any potential changes to the current labelling system, particularly with regard to Australia's valuable export sector:

... we need to recognise that over seventy five percent of the agriculture product produced in Tasmania is exported from the state, of this a significant component is then shipped internationally. With this in mind, it is important to understand that some of these international markets are critical to both the agriculture sector and the broader Australian economy. In that context it is imperative that food labelling laws do not adversely impact on these crucial markets and any changes implemented are sensitive to this.⁷

- 7.10 Mr Piper of the Australian Industry Group reiterated that potential changes should not create trade barriers and should be for the longer term:

Quite frankly, companies are tired of continued regulatory changes being imposed on them by those who forget that Australia is already one of the most expensive countries in which to manufacture in the world, if not the most expensive. Constant changes simply add to these costs.⁸

- 7.11 The AMWU submission elaborated on the need for consideration of local jobs in any change to regulation:

Country of origin labelling is a complex area. Due to the diversity of food sources and the complexity of some food production processes, there will always be exceptions and borderline cases to country of origin rules. The purpose of regulation in this area should not necessarily be to create a category for every conceivable product, but to ensure that retailers or processors who choose to source products from cheap offshore suppliers rather than support local jobs should not be able to enjoy the advantage afforded by a 'Product of Australia', 'Made in Australia' or similar label.⁹

6 Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, p. 33.

7 Tasmanian Farmers and Graziers Association, *submission 51*, p. 5.

8 Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, p. 33.

9 Australian Manufacturing Workers Union, *submission 22*, pp. 3-4.

Separate the ingredients from the manufacturing

- 7.12 The Committee received evidence regarding the attempt to clarify any ‘made in’ claim, by separating the source of ingredients or produce and the place of processing or manufacture of products.
- 7.13 Mr Andrew Spencer, Chief Executive Officer of Australian Pork Limited, noted ‘tension’ between labelling for two different purposes: origin of ingredients and where the value-add happens. Mr Spencer observed confusion in the terminology and offered a possible solution:
- ‘Made in Australia’ really refers to where the value-add is happening; ‘product of Australia’ refers to where the source ingredients originate. One solution may be to split the claim. ‘Made in Australia from imported pork’, for example, would be fairly clear to a consumer about the origin of the meat itself.¹⁰
- 7.14 Mrs Shalini Valecha, Strategy Manager, SPC Ardmona, reiterated the need for the opportunity to promote local produce and support local processing and manufacturing. Mrs Valecha described the merits of separating ‘grown in’ and ‘manufactured in’:
- ... we have a whole lot of engagement with sourcing locally and we take great pride in that. But there is a lot of manufacturing that we do here, where the labour is employed in the region and that is important to us. Any identifier that gives advantages to the local businesses where both of these factors are taken into account is the right way to go. Consumers in our experience buy on both those accounts; some are buying because it is a food sourced from Australia; and some are buying because they back locally based companies.¹¹

Proposals from submissions

- 7.15 Many submissions to the inquiry provided opinions, ideas and specific proposals for improvements to country of origin labelling. The key proposals are outlined below.

10 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 21.

11 Mrs Shalini Valecha, Strategy Manager, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 8.

CHOICE

7.16 CHOICE's proposal for change in country of origin labelling for food would 'focus on premium claims that would improve the quality of labelling for the product types for which consumers most value origin information while providing a broad claim for products for which it is difficult to make a premium claim'.¹² CHOICE recommends that country of origin claims be restricted to three tiers, to provide a focus:

- A premium claim about where the ingredients are from and where processing was done, like 'Product of Australia' or 'Australian produce'.
- A premium claim about where manufacturing is done, like 'Manufactured in Australia' (based on the current 'Made in Australia' tests and using consumer research to inform the choice of word to replace 'Made' to ensure consumers do not believe the claim relates to Australian produce).
- A broad claim to cover foods which don't meet the requirements for the premium claims, like 'Packaged in Australia', intended to cover highly processed products with inputs and ingredients from a range of countries for which making a premium claim can be difficult.¹³

7.17 CHOICE's explained that its proposed approach would prohibit the use of the 'local and imported ingredients' type qualifications:

Instead, the approach would encourage – but not mandate – the provision of specific origin information about specific ingredients, e.g. 'Made in Australia with Australian milk'.¹⁴

Simplot Australia

7.18 Simplot Australia explained that 'Made in Australia' claims should have three clear options:

- Made in Australia with no qualifications (the food or beverage product must have been produced in Australia with a minimum 90 per cent Australian derived ingredients);
- Made in Australia with mostly local ingredients, that is used when the manufacturing is performed in Australia, and at least 50 per cent of ingredients are Australian; and
- Made in Australia mostly from imported ingredients, when manufacturing is made here from less than 50 per cent Australian components.¹⁵

12 CHOICE, *submission 47*, p. 8.

13 CHOICE, *submission 47*, p. 8.

14 CHOICE, *submission 47*, p. 8.

15 Simplot Australia Pty Ltd, *submission 17*, pp. 2-3.

7.19 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia, further explained the key points of the proposal, the first being that 'Made in Australia' is the premium claim:

We have proposed that perhaps 'Product of Australia' is not a necessary requirement for food labelling. I believe that consumers understand what 'Made in Australia' means, and we could qualify that by having, as we put in our submission, the three levels associated with that. The first one would be 'Made in Australia', and in order to be able to make that claim on your product, the ingredients, all of the components of that product – what is being consumed and not the packaging – would have to be derived from Australian produce, grown in Australia.¹⁶

7.20 The next two levels of Simplot Australia's proposal, below the 'Made in Australia' claim are:

- 'Made in Australia from mostly local and imported ingredients'; and
- 'Made in Australia from mostly imported and local ingredients'.¹⁷

7.21 Mr Elder discussed the thresholds for the proposal's three tiers or levels:

If 90 per cent of what is in the bag that you are going to eat or in the bottle that you are going to drink is derived from Australian produce, I think that is good enough to call it 'Made in Australia', and you do not need to qualify it. It is simple for consumers to understand. If you go beyond that and say, "Okay, if less than 90 per cent of the components of that product are Australian derived, then you can have those two qualifying criteria of 'local and imported'". I think it could be improved if we were to add the word 'mostly' in front of that, so there is no misconception by the consumer or anybody else. For instance, if it had 70 per cent Australian produce in there, you would then refer to 'Made in Australia from mostly local and imported ingredients'. If it had less than 50 per cent, you would have to swing to the opposite saying, 'Made in Australia from mostly imported and local ingredients'. I believe that qualification, the term 'mostly', for the common person, would be quite clear and simple and easily understood.¹⁸

16 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 21.

17 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 21.

18 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 21.

- 7.22 Mr Elder outlined a consumer view of what the ‘mostly imported’ label means, and explained that the proposal clarifies the issue from a company perspective and for consumers:

While the marketing attraction of purchasing a product is all fine and dandy, really it is what they are consuming and where it was grown that is of critical importance to them, I believe ...¹⁹

- 7.23 Ms Coral Maxwell, of the Locate Australian campaign, also advocates for the use of the ‘Mostly Australian Produce’ category and discussed a threshold for that category:

The harsh reality is that not all Australian companies who desire to include all Australian produce in their products are able to do so. Some ingredients are just not available here. Hence the need for this adjusted label for some products ... I suppose over 50 per cent would have to be the gauge as that is what most consumers would say is ‘mostly’. At the end of the day the tagging system is not here to judge a product or company it is just to enable us to be informed shoppers.²⁰

- 7.24 Mr Trevor Weatherhead, Executive Director, Australian Honey Bee Industry Council, explained his organisation’s view on displaying percentages of local and imported ingredients on a product label:

At the current time there is no legislation that says you must say how much is Australian and how much is imported ... It is our contention that where that ruling is used it should say what the percentage is for how much is Australian and how much is imported. It just means that the consumer knows exactly what is in that product.²¹

Safcol Australia

- 7.25 Safcol Australia suggested that despite ‘Product of Australia’ having a stronger country of origin product claim than ‘Made in Australia’, the general consumer view may differ:

Our view is that ‘Product of Australia’ claims are not fully understood by consumers and that they do not realise that this is the strongest possible claim, mostly believing that ‘Made in Australia’ is assumed to be the highest claim and that any product

19 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 22.

20 Ms Coral Maxwell (Locate Australian), *submission 5*, pp. 4-5.

21 Mr Trevor Weatherhead, Executive Director, Australian Honey Bee Industry Council, *Committee Hansard*, Brisbane, 3 July 2014, p. 4.

using this claim must be produced locally using local ingredients.²²

- 7.26 Safcol Australia claimed that distinguishing between the two claims has not been promoted enough to consumers:

The reasoning behind this consumer thinking is that 'Product of Australia' has never had a strong campaign behind it whereas there have been 'Made in Australia' campaigns being undertaken including PR, advertising and specific use of a logo over many years which has created an entrenched view in the minds of consumers about what this means.²³

- 7.27 Safcol Australia suggested that redefining the 'Made in Australia' claim means it could take the place of 'Product of Australia' as the premium claim, adding that the 'Made in Australia' claim could only be made if the key ingredients are sourced locally.²⁴
- 7.28 Safcol Australia added that if a product's key ingredients are imported then the label could read 'Manufactured in Australia using imported and local ingredients' rather than 'Made in Australia'.²⁵
- 7.29 Safcol Australia suggested that a product's ingredients list must state the percentage of key ingredients and where the ingredient comes from (if that is over 10 per cent of the total).²⁶

Australian Made Campaign Limited

- 7.30 Mr Ian Harrison, Chief Executive of AMCL, stated that changes can and should be made to the current legislative framework to ensure that the requirements for the different country of origin claims are both clarified and made more stringent in relation to food.²⁷ According to Mr Harrison, practical changes could be made to give Australian consumers and business greater confidence in country of origin labelling here, but 'there is no need to abandon the existing system in favour of wholesale change'.²⁸

22 Safcol Australia Pty Ltd, *submission 53*, p. 1.

23 Safcol Australia Pty Ltd, *submission 53*, p. 1.

24 Safcol Australia Pty Ltd, *submission 53*, pp. 1-2.

25 Safcol Australia Pty Ltd, *submission 53*, p. 2.

26 Safcol Australia Pty Ltd, *submission 53*, p. 2.

27 Mr Ian Harrison, Chief Executive, Australian Made Campaign Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 25.

28 Mr Ian Harrison, Chief Executive, Australian Made Campaign Limited, *Committee Hansard*, Canberra, 8 May 2014, pp. 25-26.

- 7.31 AMCL suggested that the 'grown in' claim be retained, however for claims relating to ingredients, consideration be given to raising the minimum level of Australian grown content from 50 per cent to at least 75 per cent.²⁹ AMCL added that the 90 per cent by weight threshold is too high in a practical sense and a lower level (75-80 per cent) might be a more appropriate balance between consumer expectations and processing capability in Australia.³⁰
- 7.32 The AMCL submission discussed 'product of' claims, suggesting that the term is not well understood by consumers or business:
- AMCL's experience with businesses wishing to use this claim is that there is often confusion about what constitutes a 'significant ingredient' and also whether packaging is considered to be a 'significant ingredient'.³¹
- 7.33 Concerning the 'product of' claim, AMCL suggested that it be retained, but recommended that detailed guidelines or regulations under the Australian Consumer Law be developed to clarify issues relating to significant ingredients and packaging.³²
- 7.34 AMCL's submission stated that its major area of concern in regard to food product labelling is the interpretation of the term 'substantial transformation':
- ... homogenised milk, mixed diced vegetables, blended fruit juices, battered fish fillets, crumbed prawns and ham and bacon may all qualify under these guidelines as 'Australian Made' even though all the major ingredients may be imported, as long as at least 50 per cent of the cost of production is incurred in Australia.³³
- 7.35 AMCL believes that:
- ... the average consumer, seeing the words 'Australian Made' on the products listed above, might reasonably believe that the product was made from ingredients of Australian origin, certainly the major or characterising ingredients.³⁴
- 7.36 AMCL has moved to specifically exclude a number of processes such as crumbing, curing and juicing from the definition of substantial

29 Australian Made Campaign Limited, *submission 18*, p. 4.

30 Australian Made Campaign Limited, *submission 18*, p. 4.

31 Australian Made Campaign Limited, *submission 18*, pp. 4-5.

32 Australian Made Campaign Limited, *submission 18*, p. 5.

33 Australian Made Campaign Limited, *submission 18*, p. 5.

34 Australian Made Campaign Limited, *submission 18*, pp. 5-6.

transformation for the purposes of the Australian Made Australian Grown Logo Code of Practice.³⁵

- 7.37 AMCL recommends that the Australian Government:
- use the power set out in the Australian Consumer Law to make regulations which prescribe changes which are considered not to be fundamental changes; and
 - publishes new and stricter guidelines on substantial transformation in relation to food products.³⁶
- 7.38 Mr Harrison pointed out that the ACML proposals for tightening up this foundation element of the country of origin labelling system were fully endorsed by the Senate Committee inquiry into the Greens' bill on food labelling.³⁷
- 7.39 AMCL stated that where an unqualified 'Made in Australia' claim cannot be supported, any qualified claim made should not include the words 'Made in Australia':
- The current practice is illogical and confusing for both consumers and manufacturers. The words 'Made in Australia' or 'Australian Made' should be reserved exclusively for products which can meet the tests set out in the legislation.³⁸
- 7.40 AMCL's recommendation stated that the Australian Consumer Law should include specific provisions on allowable wording of country of origin claims and that these should include a prohibition on the use of the words 'Made in ...' or equivalent where the product does not meet the criteria for an unqualified 'Made in ...' claim.³⁹

AUSVEG

- 7.41 The AUSVEG submission stated that there is strong support to simplify country of origin claims to provide enough information for consumers to make informed choices. AUSVEG's proposal includes:
- 'Product of' or 'Grown in' - would be used to describe food where the ingredients have been grown and processed in a particular country. This retains the existing standard.
 - 'Manufactured in' - will replace 'Made in' for food that has been substantially transformed in a particular country. The

35 Australian Made Campaign Limited, *submission 18*, p. 6.

36 Australian Made Campaign Limited, *submission 18*, p. 6.

37 Mr Ian Harrison, Chief Executive, Australian Made Campaign Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 26.

38 Australian Made Campaign Limited, *submission 18*, p. 7.

39 Australian Made Campaign Limited, *submission 18*, p. 7.

term 'made in' will no longer be used as many people think that 'made in' refers to where the ingredients were grown.

- 'Packaged in' – will be used on food that has been highly processed but can't claim to have either ingredients of significant processing in a particular country. Companies can still choose to highlight the source of significant ingredients if they wish.⁴⁰

Australian Manufacturing Workers Union

7.42 The AMWU supports changes that would see a simplification of the existing food labelling regime to make it more readily understandable to consumers, specifically:

- converging the 'Product of' and 'Grown in' labels to simply 'Product of';
- the replacement of the 'Made in' label with 'Manufactured in' for products which, for example, were processed locally but whose ingredients were by necessity sourced elsewhere. Such a label should require a higher proportion than 50 per cent of the processing to have occurred in the specified country to meet the requirements for use; and
- the prohibition of generic or qualified country of origin claims such as 'Made of local and imported ingredients'.⁴¹

7.43 In describing the suggestion to move from 'made in' to 'manufactured in', Mr Tom Hale, Acting National Divisional Secretary Food and Confectionery Division, AMWU, suggested that:

'Made in' now has a lot of baggage. People look at 'made in' and everything they have in their mind that 'made in' means will be there irrespective of if you change the definition in the backup legislation. If you do move it to 'manufactured in', it is a new word, a new definition and a new way of getting people to understand what is actually there.⁴²

Apple and Pear Australia Limited

7.44 The Apple and Pear Australia Limited submission recommended a simplified country of origin system to enable consumers to easily identify whether a product is from overseas:

- In the case of a mixed processed product, product should be required to meet:

40 AUSVEG, *submission 39*, p. 3.

41 Australian Manufacturing Workers Union, *submission 22*, p. 3.

42 Mr Tom Hale, Acting National Divisional Secretary Food and Confectionery Division, Australian Manufacturing Workers Union, *Committee Hansard*, Melbourne, 20 June 2014, p. 5.

- ⇒ A 90 per cent threshold of Australian ingredients – that is, the fruit must have been grown in Australia;
- ⇒ A water neutral position is adopted so that if water is the only Australian sourced ingredient it does not make the whole product eligible to be labelled as Australian in origin.
- ⇒ Prohibition of the use of the terms “Made in Australia” and “Product of Australia” which are imprecise and confusing;
- The introduction of the claim “Made of Australian Ingredients” for packaged food, based on the total weight of ingredients grown in Australia;
- For fresh fruit and vegetables, the application of Grown in Australia claims to apply to both loose and packaged/bagged/punnet produce. For imported fresh produce Grown in... claims must apply.
- In the case of both fresh and processed juice products country of origin labelling for must be in a size and font that is easily legible.⁴³

Australian Industry Group

7.45 The Australian Industry Group (AIG) submission provided a substantial list of recommendations:

- a country of origin labelling system needs to be maintained
- the safe harbour defences remain appropriate – albeit with some improvement and clarification
- ‘Product of’ should remain as a premium made in claim to describe food where the ingredients have been grown and processed in that country
- the terms significant, component and ingredient be defined in the context of ‘Product of’ claims
- the current meaning of substantial transformation for complex and significant processes be retained and clarified
- substantial transformation be considered the key determinant for ‘Made in’ claims
- the role of packaging in ‘Product of’ and ‘Made in’ be clarified
- qualified claims, if retained, are clarified
- ‘Packaged in’ claims be clarified to denote minimal transformation and/or ‘Packed in’
- ‘Packaged in’ claims should not be used to obscure the country of origin/place of processing
- a common sense approach be applied to extended and qualified claims that balances information with the practicalities faced by industry

43 Apple and Pear Australia Limited, *submission 23*, pp. 3-4.

- retain country of origin food law in Standard 1.2.11.⁴⁴
- 7.46 In its submission, AIG stated that Australian country of origin labelling is suitable for export without triggering different local and export labels that may jeopardise Australia's export market potential.⁴⁵ AIG also requested that any reforms to the country of origin labelling regime be considered in the context of a regulatory impact statement.⁴⁶
- 7.47 Mr Timothy Piper, Director (Victoria), AIG, clarified the organisation's recommendations around the premium claims:
- 'Product of Australia' should be the premium one, which has the Australian ingredients in it. 'Made in Australia' should be the one that people relate to as 'Being manufactured here'. So if there were no Australian ingredients, the fact is we still have the factory here, the jobs here and the product being transformed here. It is making something of raw ingredients coming into the country ... The 'Made in Australia' is quite easily distinguishable, in a good education program, from the 'Product of Australia'.⁴⁷
- 7.48 When asked for an opinion on the proposal put forward by Simplot Australia, AIG assumed that the proposal was in the context of other existing claims for 'Grown in', 'Product of' and 'Packed in' or variations of these remaining in the labelling system:
- It remains our view that the 'Product of' claim should be a premium claim. 'Made in' without qualification, also a premium claim, should focus on the origin of the substantial transformation of the goods - and this needs to be made clear to ensure alignment of consumer understanding.⁴⁸
- 7.49 Considering Simplot Australia's proposed ingredient threshold test, AIG suggested that those thresholds are inherently arbitrary and have the potential for unintended negative consequences, potentially adding layers of complexity and compliance costs for manufacturers.⁴⁹
- 7.50 AIG considers that the 50 per cent cost-of-production test currently required to meet the 'made in' safe harbour defence should be removed

44 Australian Industry Group Confectionery Sector, *submission 48*, pp. 2-3.

45 Australian Industry Group Confectionery Sector, *submission 48*, p. 3.

46 Australian Industry Group Confectionery Sector, *submission 48*, p. 3.

47 Mr Timothy Piper, Director (Victoria), Australian Industry Group, Committee Hansard, Melbourne, 20 June 2014, p. 35.

48 Australian Industry Group Confectionery Sector, *submission 48.1*, p. 1.

49 Australian Industry Group Confectionery Sector, *submission 48*, p. 7.

from the 'made in' claims, noting that it would reduce costs and compliance burdens on business.⁵⁰

7.51 Mr Piper discussed AIG's view on the 'manufactured in Australia' term:

The term 'manufactured in Australia' is considered lesser in our view than the 'made in Australia' term is. It is a lesser term, despite them meaning the same or very similar. 'Packed in' can be used for minimally processed goods as well as goods packed in Australia.⁵¹

7.52 Mr Piper emphasised AIG's view on the preference for the 'Made in Australia' term, noting that it would be helpful 'if everyone were on the same level playing field'. Mr Piper noted that was unlikely and that: 'you will still find that the imported products come with different types of labelling to that which we have'. Mr Piper also noted that 'providing there were consistency, certainty and longevity, you would get the industry accepting of it, if not in agreement'.⁵²

Sabrands Pty Ltd

7.53 Mr Presser, Executive Chairman of Sabrands Pty Ltd, stated that labels on Sabrands products are fully compliant with current labelling requirements. Mr Presser added that the product packages state 'Product of Australia', which is currently the premium claim for Australian content, and proposed that 'Australian Grown' should be the premium claim for country of origin labelling as there should be no confusion about its meaning; it means that 100 per cent.⁵³ Mr Presser explained:

It does not mean imported, and it does not mean Australian made, it does not necessarily mean 'Product of Australia', because that does not have to be 100 per cent ... we kind of created our own category so that people would know that the whole presentation on that can explain what it is.⁵⁴

7.54 Mr Presser discussed the example of Rosella brand soups being made by Sabrands in Australia from Australian ingredients:

50 Australian Industry Group Confectionery Sector, *submission 48*, p. 7.

51 Mr Timothy Piper, Director (Victoria), Australian Industry Group, Committee Hansard, Melbourne, 20 June 2014, p. 34.

52 Mr Timothy Piper, Director (Victoria), Australian Industry Group, Committee Hansard, Melbourne, 20 June 2014, p. 39.

53 Mr Dan Presser, Executive Chairman, Sabrands Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 41.

54 Mr Dan Presser, Executive Chairman, Sabrands Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 41.

What we did with the Rosella sauces and soups was to say it is Australian grown, it is Australian manufactured, it is Australian owned, the profit stays here and all the jobs are created here ... while there might be a profit motive to ship to Indonesia or China and then bring it back as finished product, I am the other way around: I think we really have to start Australian grown and Australian made and Australian owned.⁵⁵

Other ideas

Key ingredient

7.55 The issue of identifying key ingredients on product labels was raised during the course of the inquiry. While the Committee notes the opposition of the AIG to compulsory labelling because of increased costs and regulation, the Committee acknowledges several different proposals from other industry organisations. Ideas include legislating its use, and introducing it as a voluntary code to promote Australian produce.⁵⁶

7.56 The NSW Food Authority submission suggested the use of a key ingredient descriptor:

The needs of consumers and Australian primary industries in relation to 'Made in/Packed in' claims may be better met if the country of origin labelling framework required the key ingredient(s) to be more clearly characterised. Using ... [a] pork example, 'Made in Australia from imported pork' rather than 'Made in Australia from local and imported ingredients'.⁵⁷

7.57 Cider Australia's submission stated that product labels should identify the specific country of origin of the key ingredients.⁵⁸ Mr Peter Darley (Chair, Horticulture Committee) of the NSW Farmers Association also believes that the characterising ingredients of a product should be specified by both percentage of content and the country of origin.⁵⁹

55 Mr Dan Presser, Executive Chairman, Sabrands Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 41.

56 Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, p. 34.
NSW Food Authority, *submission 45*, p. 2.
Cider Australia, *submission 26*, p. 2.
AUSVEG, *submission 39*, p. 4.
Food Technology Association of Australia, *submission 36*, p. 2.

57 NSW Food Authority, *submission 45*, p. 2.

58 Cider Australia, *submission 26*, p. 2.

59 Mr Peter Darley (Chair, Horticulture Committee), NSW Farmers Association, *Committee Hansard*, Brisbane, 3 July 2014, p. 35.

- 7.58 The Food Technology Association of Australia suggested that labelling should consider identifying key ingredients, with capacity to overlook minor ingredients:

For example, one imported spice requires the mandatory inclusion of 'imported' into a [country of origin labelling] statement, whereas the rest of the ingredients are Australian. Perhaps there should [be] a percentage cut-off where those ingredients added at less than the minimum may be ignored in relation to their sources.⁶⁰

- 7.59 Mr Callum Elder of Simplot Australia explained that businesses may choose to identify the key ingredient on the package, using it as a way of promoting Australian produce:

Manufacturers, companies and businesses would have the opportunity if they could meet that premium claim of 'Made in Australia' – the unqualified claim – of making additional statements on the front of packs. We have 'Australian grown' on our Birds Eye potato products because all of the potatoes come from Tasmania. So you would have that element and businesses would naturally want to do that, without then taking away what is required and making that more burdensome.⁶¹

- 7.60 AUSVEG believes encouraging the labelling of significant local ingredients would assist consumers making informed decisions:

Companies making the 'Manufactured in' and 'Packaged in' claims can label the origin of significant ingredients (for example 'Manufactured in Australia from Australian milk' on a chocolate bar) to give consumers more information.⁶²

- 7.61 The ACCC's *Guide for business* documentation reminds producers and manufacturers that any additional key ingredients claim must meet Australian Consumer Law requirements:

There may be situations in which a business might want to elaborate on an origin claim, such as 'Made in Australia', to highlight the presence of a key ingredient or component that originates in the country claimed – perhaps to differentiate its product from others that might contain ingredients or components

60 Food Technology Association of Australia, *submission 36*, p. 2.

61 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 22.

62 AUSVEG, *submission 39*, p. 4.

that originate elsewhere. In doing so, the business must take care to ensure its claim remains compliant with the ACL.⁶³

Stamps

7.62 Ms Lynne Wilkinson of AUSBUY outlined a suggestion from a member of the organisation that country of origin information could be placed on the use-by date stamp area on a product package:

... we have a panel where there is a use-by date, and that use-by date is stamped at the time of production. There is no reason that use-by date panel is not made larger, or it could be on the top of the lid, or something like that. It actually nominates the countries and the percentage of the product there. So, it could be stamped on. It would be able to be flexible in terms of seasonality.⁶⁴

Committee comment

7.63 The Committee recognises that country of origin labelling is a complex issue and heard a wide range of suggestions for change and improvement. Identifying or articulating the problems is relatively easy; the challenge is to propose solutions.

7.64 The Committee agrees with the view that there must be a separation between the manufacture and the ingredients aspects of a country of origin label. The Committee considers that the currently used variations of the 'Made in' labels blur the distinction between where the product was made and the origin of the ingredients, and is of the opinion that the source of ingredients claim and the place of manufacture claim should be separate in any country of origin labelling regime.

7.65 The Committee acknowledges that many consumers want to support Australian businesses by purchasing Australian made products – consumers express a strong preference to support local industries including food processing and manufacturing.

7.66 The Committee heard extensive evidence demonstrating that the use of imported ingredients, primarily under the 'local and imported' tag, confuses consumers, and that most consumers would prefer a product that is made in Australia yet describes where the ingredients come from.

7.67 The Committee is also in favour of retaining the 'Grown in' label, identifying produce that is 100 per cent grown in the country specified.

63 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

64 Ms Lynne Wilkinson, Chief Executive Officer, AUSBUY, *Committee Hansard*, Sydney, 9 May 2014, p. 22.

For example, this would apply to fresh produce grown in Australia, but could also apply to manufactured products where 100 per cent of the ingredients are grown in Australia.

- 7.68 The Committee favours retaining the 'Product of' claim as the premium claim. The Committee is of the opinion that the premium 'product of' claim cannot be removed from the country of origin labelling framework as it is recognised internationally. The safe harbour for 'Product of' should remain at 90 per cent of content from the country specified.
- 7.69 The Committee favours the introduction of a premium claim of 'Made in [country] from [country] ingredients', which would be equivalent to 'Product of', with 90 per cent of content from the country specified. In operation, this would allow a claim such as 'Made in Australia from Australian ingredients'. The Committee is of the opinion that 'Made in' means more to consumers and should be an equivalent premium claim.
- 7.70 The Committee recognises that descriptors such as 'Made in' or 'Product of' apply to non-food items. However it is clear to the Committee that consumers already differentiate the food sector from other sectors, which may not align with descriptors for other goods.
- 7.71 Below the premium claims, the Committee favours a qualified, two step category that will replace the 'local and imported' tag:
- 'Made in [country] from mostly local ingredients'; and
 - 'Made in [country] from mostly imported ingredients'.
- 7.72 The Committee notes that the threshold between the two categories would be 50 per cent of content. The Committee also notes that the word 'Australian' could be substituted for 'local'. This 'mostly local' or 'mostly imported' approach will allow consumers to quickly determine the origin of the majority of the ingredients in a given product.
- 7.73 The Committee is satisfied with the substantial transformation test and the 50 per cent cost rule remaining as the two part test for the 'Made in' claims discussed above.
- 7.74 The Committee strongly encourages producers and manufacturers to identify the origin of key ingredients, especially those key ingredients that are Australian, e.g. 'Tomato sauce with 78 per cent tomatoes grown in Australia'. The Committee also encourages the use of front of pack logos, stamps or text identifying key Australian ingredients, which, as a marketing tool, will benefit Australian businesses.

Recommendation 1

The Committee recommends that the Australian Government implement the following country of origin labelling safe harbours:

- 'Grown in' - 100 per cent content from the country specified;
- 'Product of' - 90 per cent content from the country specified;
- 'Made in [country] from [country] ingredients' - 90 per cent content from the country specified;
- 'Made in [country] from mostly local ingredients' - more than 50 per cent Australian content;
- 'Made in [country] from mostly imported ingredients' - less than 50 per cent Australian content.

Identifying countries that we import from

7.75 An important question was raised during the inquiry's public hearings concerning the identification of country of origin of imported ingredients in products that are 'made in Australia from local and imported ingredients'.

7.76 Cider Australia was among many inquiry submitters that believes that product labels should identify the specific country of origin of the key ingredients, for example apple juice made from concentrate.⁶⁵ According to Mr Daniel Presser of Sabrands Pty Ltd, consumers have a right to know, and such information should not be hidden:

... just saying 'Made in Australia from local and imported ingredients', or from imported ingredients, is not an honest system. If it is imported, I do not have a problem with that, but I would like to know, as a consumer - which I am - where it is imported from. I know that with some of the tomato sauces that say 'Australian made' the ingredients used to come from China.⁶⁶

65 Cider Australia, *submission 26*, p. 2.

66 Mr Dan Presser, Executive Chairman, Sabrands Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, p. 42.

7.77 Mr Andrew Spencer of Australian Pork Limited discussed his organisation's preference for identifying the origin of ingredients in an Australian made product:

If I was a consumer I would probably say [that 'Made in Australia from American pork'] was more informative: it is made in Australia, which means that a lot of value-add happened here, and for some consumers that is important. Saying '... from Canadian pork' is also important if they want to support Australian farmers. I think that is the most informative option.⁶⁷

7.78 The Committee acknowledges the views of other inquiry participants that identifying specific countries is not necessary.⁶⁸ Mr Elder of Simplot Australia noted the difficulties for food manufacturers and that in his view, Australian consumers are more interested in knowing whether they are eating Australian produce grown by Australian farmers.⁶⁹

Committee comment

7.79 The Committee appreciates the arguments put forward for labelling countries of origin for imported products and ingredients.

7.80 The Committee believes that naming the individual countries where ingredients were sourced could be onerous for food manufacturers.

7.81 The Committee is mindful of the need for Australia to meet its trade obligations. According to international agreements, Australia's domestic regulations must not create unnecessary obstacles to trade, or give its domestic producers an unfair advantage over imports, or give imports of a World Trade Organisation member an unfair advantage over other members.

7.82 We should not be seeking to prejudice foods from any particular country, or to favour goods produced in Australia. We cannot single out or disadvantage any one country.

7.83 The Committee considers that food producers and manufacturers can still label the country of origin of imported ingredients if there is a competitive advantage to do so.

67 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 22.

68 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, pp. 22-23.
Mr Rob Fish, Chair, Northern Territory Seafood Council, *Committee Hansard*, Brisbane, 3 July 2014, p. 11.

69 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia Pty Ltd, *Committee Hansard*, Melbourne, 20 June 2014, pp. 22-23.

Labels

Symbols and icons

7.84 The use of confusing or misleading symbols and icons was discussed in chapter four. The ACCC's *Guide for business* describes a General Principle regarding pictorial representations:

Pictorial representations may also be interpreted as country of origin claims, e.g. use of logos, pictures of iconic animals or iconic symbols.⁷⁰

7.85 Further information in the *Guide for business* discusses pictorial representations:

Claims or promotions are frequently made by graphic representations – such as logos, symbols and pictures. Country of origin symbols could include kangaroos, koalas, boomerangs, the Southern Cross, maps or outlines of Australia, national flags or other countries' icons such as maple leaves.

These representations can be just as forceful and effective as written representations, if not more so. Special care should be taken when using pictorial representations to ensure that they do not give a misleading impression.

If a reasonable conclusion from such symbols is that the origin of the good is a particular country when that is in fact not the case, there is a risk of breaching the law.

Any text or symbols that attempt to qualify pictorial representations must be sufficiently prominent to ensure that consumers are aware of them and understand their significance.⁷¹

7.86 Safcol Australia reiterated that, to avoid misleading consumers, labels should not use symbols such as kangaroos, maps of Australia and other icons if the key ingredient is imported.⁷²

7.87 SPC Ardmona stated that rules and regulations with respect to the use of words, symbols, maps, pictures, font sizes and text formats must be tightened and consumer education programs launched to ensure that the consumer can easily identify the origin of a food product they are purchasing.⁷³

70 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

71 Australian Competition and Consumers Commission (2014), *Country of origin claims and the Australian Consumer Law – A guide for business*. April 2014.

72 Safcol Australia Pty Ltd, *submission 53*, p. 2.

73 SPC Ardmona, *submission 46*, p. 7.

Graphics representing content

7.88 The Committee sought evidence from witnesses on the use of pie charts or bar graphs to display on packaging the percentage of local and imported contents. Mr Peter Darley of the NSW Farmers Association clearly stated:

We support the option of using a graphic representation of the percentage of Australian grown, produced and processed Australian ingredients on the label or container of an item.⁷⁴

7.89 Mr Callum Elder of Simplot Australia agreed that any representation or device that could assist consumers visually would be of benefit.⁷⁵

7.90 However, Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Department of Industry, suggested that such graphical representation may not be possible:

In a lot of circumstances, that is about people who want to know how much of it is Australian. As a general rule for safe harbours for all food sold in this country, whether it is Australian or imported, it is probably not that practical. Would you require all the countries around the world to also use this pictorial representation that is not actually recognised? When you put the pictorial representation on it and it goes overseas, would anyone overseas understand what you mean? Words like 'Made in' and 'Produced in' are recognised internationally. That is why they are used in Australia: you can trade freely on those terms and people understand what they mean.⁷⁶

7.91 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, discussed the problems and practicalities of the use of symbols and graphics on product labels:

The labels get very busy, unfortunately. Everyone wants a piece of their pie on the labels for health issues and a whole range of factors. I would suggest that the growth in those visual aids and certification schemes and programs are symptomatic of the problem. They would not need to do that if the requirements were fairly clear. If people need these various logos to try to identify their product better, that once again suggests there is an issue with how the law requires companies to label the 'Made in Australia'

74 Mr Peter Darley (Chair, Horticulture Committee), NSW Farmers Association, *Committee Hansard*, Brisbane, 3 July 2014, p. 35.

75 Mr Callum Elder, Executive Director, Quality and Innovation Division, Simplot Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 22.

76 Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, pp. 14-15.

products out there. From our own experience, if there is a commercial driver to it, that has a fairly good chance of success versus regulation ... The problem with labelling, of course, is that you are limited in terms of space and the message. Those who want to look at the label will find the message if they have to.⁷⁷

Label characteristics

7.92 There was much discussion in submissions and at public hearings concerning the placement and formatting of country of origin information on product labels.

7.93 The AMWU were among participants which called for increased prominence of country of origin labelling on food packaging:

More prominent country of origin labels would be more consumer-friendly and align with similar requirements for increased prominence in the fresh food sector.⁷⁸

7.94 Mr Peter Darley of the NSW Farmers Association stated that country of origin information is well hidden on the back of product packaging and should be moved to the front of the pack, thereby providing clear and precise information to the consumer.⁷⁹

7.95 Safcol Australia, agreed, suggesting that the location of the statement needs to be highly visible, preferably on the front of pack, and of a size that is readable.⁸⁰

7.96 Mr Day of the NSW Food Authority explained that the key problem with labelling is the availability of space.⁸¹ The AUSVEG submission discussed attempts to change labels and the problems that may be encountered:

Industry has made many requests for visual representations to be placed on the front of packaging, including pictorial representations, charts and other means of disseminating information. These attempts have been unsuccessful, with opponents citing the difficulties in compliance and forecasting

77 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 16.

78 Australian Manufacturing Workers Union, *submission 22*, p. 3.

79 Mr Peter Darley (Chair, Horticulture Committee), NSW Farmers Association, *Committee Hansard*, 3 July 2014, p. 38.

80 Safcol Australia Pty Ltd, *submission 53*, p. 2.

81 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 16.

supply. It has been argued that difficulties with the latter could make it hard to manufacture sufficient packaging.⁸²

- 7.97 AUSVEG claimed that there are no provisions within the current food standards code for visual representations of country of origin labelling, outside of what statements are required to be made.⁸³ The AUSVEG submission proposed that a simple text size change be implemented, that fits within the current framework and makes the country of origin declaration more easily identifiable:

... it is suggested that the declaration of origin be required to be 40 per cent larger than the text surrounding it, and that an emphasising mark such as **bold**, underlined or *italicised* text is used.

Normally the declaration is found near either the manufacturers details, its ingredients list or storage information, and is difficult to distinguish from surrounding text. Requiring the above visual identifier would not require any significant changes to the current food standards code but would greatly assist consumers making an informed decision.⁸⁴

- 7.98 When asked about simplifying symbols on labels, Mr Tom Hale of the AMWU stated that the small size is part of the problem rather than what symbol is used. Mr Hale added that more symbols are likely to confuse, and need to be simple:

... whether it is a kangaroo or a map of Australia ... I do believe that it has to be simple enough and restricted enough that you do not need a law degree to work out what it is. And it needs to be big enough for people to see.⁸⁵

Committee comment

- 7.99 The Committee agrees that current country of origin labelling information on packaged foods is insufficient and does not meet the needs of consumers. Rules and regulations with respect to the use of words, symbols, maps, pictures, font sizes and text formats should be tightened to ensure that the consumer can easily identify the origin of a food product.
- 7.100 The Committee does not agree that country of origin labelling should necessarily be on the front of a pack. However, the Committee is of the
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82 AUSVEG, *submission 39*, p. 3.

83 AUSVEG, *submission 39*, p. 3.

84 AUSVEG, *submission 39*, p. 3.

85 Mr Tom Hale, Acting National Divisional Secretary Food and Confectionery Division, Australian Manufacturing Workers Union, *Committee Hansard*, Melbourne, 20 June 2014, p. 5.

opinion that country of origin labelling should certainly be clearly delineated and identifiable on the back of the pack.

- 7.101 Standard 1.2.9 (Legibility Requirements of the Code) establishes that the statement provided for unpackaged foods must be at least nine millimetres in height, or five millimetres in height if the food is in a refrigerated assisted service display cabinet. There are no conditions for the height of a country of origin statement on packaged foods.
- 7.102 The Committee is of the opinion that the Standard should be amended to include label text size requirements for packaged foods. The Committee is supportive of the suggestion to have the country of origin label in a larger size, perhaps with some sort of unique separator such as bold or underlined text. A specific size may not need to be mandated, however, a particular size ratio compared to other text on the label could be. A label that is at least 25 per cent larger than the text surrounding the statement would be sufficient.
- 7.103 The Committee is of the opinion that the use of iconic Australian symbols on product packaging should be more closely monitored. The Committee believes that the ACCC guidelines are sufficient and clear, however there is a need for more emphasis on enforcement. Evidence suggests that there are still too many products in the market carrying such images that lead consumers to believe that the contents are Australian, when in fact there may be a substantial percentage of imported ingredients.
- 7.104 To avoid misleading consumers, labels should not use symbols such as kangaroos, maps of Australia and other icons if the key ingredient is imported, or if the contents fall under the 'mostly imported' category recommended earlier in this chapter.
- 7.105 The Committee favours the use of a visual descriptor emphasising the 'mostly local' or 'mostly imported' approach recommended earlier in this chapter. A small coloured pie chart showing the percentage of local and imported ingredients could be introduced as part of the labelling framework, allowing consumers to quickly identify the source of the majority of ingredients at a glance.

Recommendation 2

The Committee recommends that the Australian Government amend Standard 1.2.9 of the *Australia New Zealand Food Standards Code* that will allow for prescription of country of origin label text information on packaged foods to be increased in size compared with surrounding text on a product label.

Recommendation 3

The Committee recommends that the Australian Government increase its scrutiny of products with mostly or all imported ingredients that use misleading Australian symbols, icons and imagery.

Recommendation 4

The Committee recommends the introduction of a visual descriptor that reflects the safe harbour thresholds of Australian ingredients in the content of a product.

Calls for a ministerial taskforce

7.106 AUSVEG's submission recommended that the Australian Government establish a Ministerial Taskforce, charged with resolving the discrepancies of the current country of origin labelling system.⁸⁶ The taskforce would develop an 'Agreed Standard' for country of origin labelling, and report to government with a solution supported by all parties six months after its establishment. In AUSVEG's view:

This would provide for a mandate from government, for industry to develop a solution. It would also provide impetus for industry to coordinate and respond to the task set by government.⁸⁷

7.107 AUSVEG suggested that one of the terms of reference for the Ministerial Taskforce could be to work with relevant departmental authorities to

⁸⁶ AUSVEG, *submission 39*, p. 6.

⁸⁷ AUSVEG, *submission 39*, p. 2.

ensure that any changes proposed do not compromise any of Australia's international trade obligations.⁸⁸

- 7.108 Mr Mulcahy Chief Executive Officer, AUSVEG, expressed frustration at the unresolved issues and suggested that a ministerial group would benefit from guidance at ministerial level, and relevant departments could join with industry and relevant unions, to find 'some measure of consensus for the parliament'.⁸⁹

Committee comment

- 7.109 The Committee considers that the ministerial taskforce idea put forward has merit, however, the Committee is not in favour of the proposal at this time.

Education and awareness

- 7.110 Many submissions to the inquiry discussed the role of education in informing consumers about the country of origin framework, whether that be the existing rules or any potential changes.
- 7.111 Mr Peter Day of the NSW Food Authority stated that the country of origin labelling regime would benefit from measures such as education and communication campaigns to actually improve food business and consumer understanding of the requirements.⁹⁰
- 7.112 Simplot Australia explained that consumers need to be educated and made aware of what the labels mean and what to expect from the products they consume.⁹¹
- 7.113 Mr Timothy Piper of the Australian Industry Group suggested that the 'Made in Australia' claim is quite easily distinguishable, in a good education program, from the 'Product of Australia' claim.⁹²
- 7.114 Mr Steve Mickan, Sales Director, SPC Ardmona, also called for educational programs to clarify for consumers the differences between the various claims and their meanings.⁹³

88 AUSVEG, *submission 39*, p. 5.

89 Mr Richard Mulcahy, Chief Executive Officer, AUSVEG, *Committee Hansard*, Sydney, 9 May 2014, p. 5.

90 Mr Peter Day, Director, Compliance, Investigation and Enforcement, NSW Food Authority, *Committee Hansard*, Sydney, 9 May 2014, p. 13.

91 Simplot Australia, *submission 17*, p. 3.

92 Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, p. 35.

- 7.115 The AMCL submission stated that a major consumer education program is needed to clarify the meaning of the 'Made in' claim, and that program should be delivered through a partnership between the federal government and the Australian Made Campaign.⁹⁴
- 7.116 Mr Thomas Bradley QC (Deputy Chair, Competition and Consumer Law Committee, Business Law Section) of the Law Council of Australia suggested that an education campaign could help explain the existing labelling framework to consumers:

The point ... is whether the safe harbour defences confuse consumers. That can be a matter about consumer education, as opposed to regulatory change. It seems clear that to claim that something is 'Made in Australia', whether it is made from local and imported ingredients or not, it has to be substantially transformed here or more than 50 per cent of its costs have to be incurred here. And if consumers understood – through whatever means – that that was what that term meant, there would not be this confusion.⁹⁵

- 7.117 Ms Lyndall Milward-Bason of the Department of Industry agreed that education would be beneficial, explaining that labelling is not misleading or deceptive:

It is a matter of education. The fundamental issue is not about the framework; it is about the understanding of the claims by consumers. That is why the processes we are going through are not about changing regulation, new regulation or additional regulations; it is about education of the consumers through the new guidance material and if necessary an education campaign. The 'if necessary' is a little difficult to assume until you have evidence that particularly the last lot of guidance is not working. The [2015 Australian] consumer survey is aimed to provide us with the evidence as to whether there needs to be money spent on an education campaign.⁹⁶

93 Mr Steve Mickan, Sales Director, SPC Ardmona, *Committee Hansard*, Melbourne, 20 June 2014, p. 7.

94 Australian Made Campaign Limited, *submission 18*, p. 6.

95 Mr Thomas Bradley QC, Deputy Chair, Competition and Consumer Law Committee, Business Law Section, Law Council of Australia, *Committee Hansard*, Brisbane, 3 July 2014, p. 27.

96 Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 9.

- 7.118 Ms Milward-Bason also stated that it is the view of the Council of Australian Governments that new guidance material for consumers needs to be produced and that an education campaign may be necessary.⁹⁷
- 7.119 Mrs Denita Wawn, Chief Executive Officer, Brewers Association of Australia and New Zealand, claimed that there has not been a significant attempt to educate consumers:
- ... we always believe that is your first port of call and, if that is not successful, then you change the law. So we are saying that at this stage, with labelling, whether it is in relation to country of origin or any other requirements we have on labelling at present, then it is up to government but also the industry to educate consumers more effectively on the products that they are consuming and wish to purchase.⁹⁸
- 7.120 Mrs Wawn added that until such time people are better aware of what labels mean, it will be very hard to get behavioural change or awareness change within the community.⁹⁹
- 7.121 Some submitters suggested that any proposed changes to country of origin labelling laws will need to be accompanied by an education campaign so that consumers can understand the changes.¹⁰⁰
- 7.122 AMCL suggested that a consumer education and information program should be funded and delivered by a partnership between government and industry.¹⁰¹
- 7.123 The Food Technology Association of Australia suggested that regardless of which country of origin labelling system is in place there should an education program aimed directly at consumers which should be funded and provided by an independent-of-industry body, which is under the auspices of Government, even though some funds may come from private organisations.¹⁰²

97 Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 14.

98 Mrs Denita Wawn, Chief Executive Officer, Brewers Association of Australia and New Zealand, *Committee Hansard*, Canberra, 26 June 2014, p. 7.

99 Mrs Denita Wawn, Chief Executive Officer, Brewers Association of Australia and New Zealand, *Committee Hansard*, Canberra, 26 June 2014, p. 6.

100 Mr Russell Goss, Deputy Chief, Australian National Retailers Association, *Committee Hansard*, Sydney, 9 May 2014, p. 24.

Mr Timothy Piper, Director (Victoria), Australian Industry Group, *Committee Hansard*, Melbourne, 20 June 2014, p. 33.

Australian Made Campaign Limited, *submission 18*, p. 1.

101 Australian Made Campaign Limited, *submission 18*, p. 1.

102 Food Technology Association of Australia, *submission 36*, p. 2.

- 7.124 CHOICE claimed that the current labelling framework is so confusing that consumer education is unlikely to be effective. CHOICE believes that simplifying country of origin claims is likely to make a consumer education campaign more successful.¹⁰³

Committee comment

- 7.125 The Committee considers that a comprehensive education and awareness program is essential for consumers and industry, irrespective of any changes to current country of origin labelling laws. A vital component of such a program would be to educate consumers on the fundamental definitions of the key country of origin claims. The publishing of the ACCC's *Country of origin claims and the Australian Consumer Law – A guide for business* earlier in 2014 is a first step toward bringing the information to industry and consumers.
- 7.126 The Committee is of the opinion that the Australian Government should develop and implement an education program based on the existing country of origin labelling framework, and then adjusted should any changes to the framework be introduced. The education program should then be revised based on the findings of the Australian Consumer Survey which is scheduled for 2015.
- 7.127 In the Committee's view, the program should raise awareness for consumers and industry of country of origin labelling rules, regulations, requirements and impacts, and be developed by the Department of Industry and the ACCC in conjunction with industry peak bodies and consumer advocacy groups.

Recommendation 5

The Committee recommends that the Australian Government, in conjunction with industry and consumer advocacy groups, develop and implement an education program designed to raise awareness of country of origin labelling rules, regulations, requirements and impacts, for consumers and industry. The program should be developed and implemented following any changes that have been adopted in response to this report.

¹⁰³ CHOICE, *submission 47*, p. 11.

Bar codes

7.128 The Committee discussed the use of bar codes on products, potentially allowing consumers to scan a product in the store to obtain additional information. When asked about the potential for that technology to be developed, Mr Russell Goss, Deputy Chief, Australian National Retailers Association, stated that his organisation supports the use of such technology:

It makes more sense if you do have a mobile phone with that kind of capability to scan a bar code. You might have allergen information, country-of-origin information, or information about other ingredients you might be interested in. You can combine that with dietary management and what have you ... So rather than attempting to jam an infinite amount of information on a small tin of tuna, you could provide that through modern technology – which, again, is easily updated and is more likely to be accessible by modern consumers.¹⁰⁴

7.129 Citrus Australia (SA Region) suggested that there are consumer education products already on the market that are accurate and cost effective, including smart phone apps and easy to navigate websites which benefits industry and consumers:

A good example of this [is] the Goscan smartphone app which scans a barcode label in the supermarket and the consumer is instantly directed to a website which contains all the relevant information for that specific product. This type of technology allows the consumer to not only read about the Australian content of the product at time of purchase but a detailed report about the company that produces it. Whilst this technology is not appropriate for the entire population, consumer education and empowerment via such tools is certainly an initiative that warrants further discussion.¹⁰⁵

Committee comment

7.130 The Committee notes the opportunities that bar codes and smart phone technology present in delivering further information to consumers about products. Bar codes (including matrix bar codes or ‘QR codes’) could provide country of origin information as well as further details on

104 Mr Russell Goss, Deputy Chief, Australian National Retailers Association, *Committee Hansard*, Sydney, 9 May 2014, p. 26

105 Citrus Australia (SA Region), *submission 28*, p. 4.

seasonality of ingredients and other information that may not necessarily fit on a small label.

Recommendation 6

The Committee recommends that the Australian Government, in co-operation with industry, investigate the use of bar code technology in the presentation of product information for consumers, with a view to implementing a voluntary system for producers and manufacturers. Any system developed should be highlighted as part of a consumer education campaign.

Issues from earlier chapters

Labelling of seafood in restaurants

7.131 The issue of country of origin labelling of seafood in the food service market was discussed in chapter four of the report.

Committee comment

- 7.132 The Committee acknowledges the Australian consumer's desire for high quality Australian seafood, with its inherent high standards in sustainability, safety and hygiene.
- 7.133 The Committee notes that Australian consumers consider Australian seafood to be higher quality than imported seafood, suggesting once again that country of origin is a proxy for quality. The Restaurant and Catering Industry Association of Australia comments on consumers considering quality more important over other criteria would seem to confirm that country of origin is a key concern.
- 7.134 The Committee recognises that the Northern Territory has a unique labelling scheme for seafood in the food service sector. However, the Committee is of the opinion that as seafood is the only substantial protein source marketed in Australia that is not predominantly sourced locally, a case may be made that it should be treated differently to other sources, for instance beef and lamb. The evidence from the Northern Territory would suggest once implemented, mandatory country of origin labelling for seafood at all points of sale has been welcomed by the Northern Territory community. However, the Committee considers it did not receive enough evidence in this area to make a firm recommendation for its wider

implementation, and accordingly recommends the issue receives further examination by the Council of Australian Governments.

Recommendation 7

The Committee recommends that the Northern Territory's country of origin labelling of seafood in the food service sector be referred to the Council of Australian Governments for consideration.

Food imports from New Zealand

7.135 The issue of food imported from New Zealand was discussed in chapter five of the report.

Committee comment

7.136 The Committee found that the level of confusion amongst industry and consumers regarding the obligations on New Zealand food imports into Australia a particular concern. This confusion appears to stem from public reviews conducted since 2009.

7.137 The Committee hopes that this report will assist to reassure concerned stakeholders that all food imports are physically labelled with their country of origin. This legal obligation remains despite the TTMRA.

7.138 The Committee noted that there is a difference of opinion between the Australian government¹⁰⁶ and the New Zealand government¹⁰⁷ on the application of the TTMRA and the *Commerce (Trade Descriptions) Act 1905*. The Committee therefore recommends that the Department of Industry undertake specific liaison with the New Zealand Government so to achieve some much needed clarity on the requirements of New Zealand food imports into Australia.

106 Department of Industry, *submission 20.1*, p. 6;
Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 17 July 2014, p. 1.

107 New Zealand High Commission, *submission 49*, p. 3;
Mr Matthew Aileone, First Secretary, New Zealand High Commission, *Committee Hansard*, Canberra, 29 May 2014, p. 5.

Recommendation 8

The Committee recommends that the Department of Industry undertake specific liaison with the New Zealand Government to reach an agreed interpretation and understanding of the provisions of the Trans-Tasman Mutual Recognition Arrangement and the *Commerce (Trade Descriptions) Act 1905*, as they relate to country of origin labelling for food.

Rowan Ramsey MP

Chair

13 October 2014



Appendix A: Submissions

- 1 Mr Bill Bowron
- 2 Consumers' Federation of Australia
 - 2.1 Supplementary
- 3 Mr Philip Harrison
- 4 Mr Colin Fairclough
- 5 Ms Coral Maxwell, Locate Australia
- 6 Australian Pork Ltd
- 7 Mr Ken Grundy, Made in Australia Campaign
- 8 Mr George Hill, Salonculinaire.com
- 9 Mr Bruce Collins
- 10 Mr Steve Lloyd
- 11 Mr M Lloyd
- 12 Food Standards Australia New Zealand
- 13 AUSBUY
 - 13.1 Supplementary
- 14 The Master Fish Merchants' Association of Australia
- 15 Australian Honey Bee Industry Council Inc
- 16 RSPCA
- 17 Simplot Australia Pty Ltd
- 18 Australian Made Campaign Ltd
- 19 Australian Barramundi Farmers Association
- 20 Department of Industry
 - 20.1 Supplementary

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- 21 Australian National Retailers Association
21.1 Supplementary
- 22 Australian Manufacturing Workers Union
- 23 Apple and Pear Australia Ltd
- 24 Mr Stephen Gately, Buy Australian Made
- 25 Australian Prawn Farmers' Association
- 26 Cider Australia
- 27 Northern Territory Seafood Council
- 28 Citrus Australia - SA Region
- 29 Fisheries Research and Development Corporation
- 30 Brewers Association of Australia New Zealand Inc
30.1 Supplementary
- 31 National Seafood Industry Alliance
- 32 Ms Amanda Rishworth MP
- 33 Confidential Confidential
- 34 Department of Health
- 35 Australian Food and Grocery Council
- 36 Food Technology Association of Australia
- 37 Mr Bart Brighenti
- 38 Department of Agriculture
- 39 AUSVEG
- 40 NSW Farmers
- 41 Australian Competition and Consumer Commission
41.1 Supplementary
- 42 National Farmers' Federation
- 43 Australian Dairy Farmers
- 44 Law Council of Australia
- 45 NSW Food Authority
- 46 SPC Ardmona
- 47 CHOICE
- 48 The Australian Industry Group
48.1 Supplementary
- 49 New Zealand High Commission
49.1 Supplementary

- 50 Tasmanian Government
- 51 Tasmanian Farmers & Graziers Association
- 52 Mr Mark White
- 53 Safcol Australia
- 54 Mr John Macey



Appendix B: List of Witnesses

Thursday, 8 May 2014 – Canberra

Government Departments Roundtable

Department of Agriculture

Mr Mark Phythian, Director

Mr Colin Hunter, A/g First Assistant Secretary, Compliance Division

Mr Matthew Koval, A/g First Assistant Secretary, Agriculture Productivity Division

Mr Travis Power, Assistant Secretary, Food Branch, Agriculture Productivity Division

Department of Industry

Mr Paul Trotman, A/g Division Head, Business Competitiveness and Trade

Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section

Department of Foreign Affairs and Trade

Mr James Wiblin, Director, Food Trade and Quarantine Section

Mr Phil Holmes, Executive Officer, Trade Law Section B

Mr Ravi Kewalram, Assistant Secretary, Trade Law Branch

Department of Health

Mr Nathan Smyth, First Assistant Secretary, Population Health Division

Ms Kathy Dennis, Assistant Secretary, Healthy Living and Food Branch, Population Health Division

Mr Steve McCutcheon, CEO, Food Standards Australia New Zealand

Treasury

Mr Ben Dolman, Principle Advisor, Competition and Consumer Policy

Australia Made Campaign

Mr Ian Harrison, Chief Executive

Ms Lisa Crowe, Administration and Compliance Manager

Australian Food and Grocery Council

Mr Gary Dawson, Chief Executive Officer

Mr Christopher Preston, Director, Legal and Regulatory

Australian Competition and Consumer Commission

Mr Nigel Ridgway, Group General Manager, Compliance and Product Safety

Mr Scott Gregson, Group General Manager, Enforcement Group

Australia Pork Limited

Mr Andrew Spencer, Chief Executive Officer

Ms Deborah Kerr, General Manager, Policy

Friday, 9 May 2014 – Sydney**AusVeg**

Mr Richard Mulcahy, Chief Executive Officer

Mr William Churchill, Communications and Public Affairs Manager

CHOICE

Mr Matthew Levey, Director of Campaigns and Communications

Ms Angela Cartwright, Campaign Manager

NSW Food Authority

Mr Peter Day, Director, Compliance, Investigation & Enforcement

AUSBUY

Ms Lynne Wilkinson, Chief Executive Officer

Australian National Retailers Association

Mr Russell Goss, Deputy Chief

Thursday, 29 May 2014 - Canberra**New Zealand High Commission**

His Excellency Mr Chris Seed, High Commissioner
Ms Alison Mann, Deputy High Commissioner
Mr Matthew Aileone, First Secretary

Friday, 20 June 2014 – Melbourne**Australian Manufacturing Workers Union**

Mr Thomas Hale, A/g National Divisional Secretary, Food and
Confectionary Division

SPC Ardmona

Mr Steve Mickan, Sales Director
Ms Shalini Valecha, Strategy Manager

Apple and Pear Australia Ltd

Ms Annie Farrow, Industry Service Manager

Simplot Australia Pty Ltd

Mr Callum Elder, Executive Director, Quality and Innovation Division
Ms Cristina Lesseur Sichel, Corporate Quality Manager

Australian Dairy Industry Council

Dr Peter Stahl, Executive Director
Mr Stewart Davey, Manager, Regulatory Affairs

The Australian Industry Group

Mr Tim Piper, Director
Ms Jennifer Thompson, Technical & Regulatory Manager

Thursday, 26 June 2014 - Canberra**Cider Australia**

Mr Sam Reid, President

Brewers Association of Australia New Zealand Inc

Mr Bryan Mundy, Research & Policy Analyst
Mrs Denita Wawn, Chief Executive Officer

Thursday, 3 July 2014 - Brisbane**Australian Honey Bee Industry Council Inc**

Mr Trevor Weatherhead, Executive Director

Seafood Industry Roundtable***Australian Barramundi Farmers Association***

Mr Marty Phillips, President

Australian Prawn Farmers Association

Ms Helen Jenkins, Executive Officer

Northern Territory Seafood Council

Mr Rob Fish, Chair

National Seafood Industry Alliance

Mr Scott Wiseman

Restaurant and Catering Australia

Mr John Hart, Chief Executive Officer
Ms Carlita Warren, Research and Policy Officer

Law Council of Australia

Mr Robert Williams, Committee Member

NSW Farmers

Mr Peter Darley, Chair, Horticulture Committee
Mr Bill McDonnell, Chair, Business, Economics and Trade Committee

Thursday, 17 July 2014 - Canberra**Department of Agriculture**

Mr Mark Phythian, Director
Mr Matthew Koval, A/g First Assistant Secretary
Mr Robert Soloman, Director

Mr David Ironside, A/g Assistant Secretary

Department of Industry

Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section

Australian Competition and Consumer Commission

Mr Nigel Ridgway, Executive General Manager

Mr Scott Gregson, Executive General Manager