Australian Government

Department of Agriculture

SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into the current requirements for labelling of seafood and seafood products

SUBMISSION FROM

DEPARTMENT OF AGRICULTURE

JULY 2014

Introduction

The Australian Government Department of Agriculture welcomes the opportunity to provide a submission to the Australian Senate Rural and Regional Affairs and Transport References Committee's inquiry into the current requirements for labelling of seafood and seafood products.

Seafood labelling is increasingly a hot topic for the Australian seafood industry and larger retailers in response to growing media and community interest in the health of the world's fish stocks. Seafood labelling covers a range of distinct labelling and certification issues, including standardised names of fish species, country of origin labels and certification with regard to the sustainability of fish stocks and the impact of the fishing practice on the marine environment.

Australia's labelling laws require food labels to be clear and accurate so that consumers can make informed choices about the safety and nutritional quality of the food they buy. Food labels inform consumers about the nature of the product, but must also balance a range of interests and be consistent with Australia's international obligations. At the same time the Australian Government has a strong commitment to cut red tape and reduce regulatory burden for business, especially small business.

This submission provides an overview of the Department of Agriculture's role in seafood labelling, describe Australia's country of origin labelling framework, identify international seafood labelling issues, consider mandatory country of origin labelling in the food services sector and voluntary seafood labelling options.

The Department of Agriculture

The Agriculture portfolio works to enhance the sustainability, profitability and competitiveness of Australia's agriculture, food, fisheries and forestry industries.

The Department of Agriculture provides advice to the Minister on the implementation of the Australian Government's agenda for agriculture, including on agricultural productivity, profitability, competitiveness and sustainability.

The department manages the risks of exotic pests and diseases entering the country by way of the *Quarantine Act 1908* and inspecting food to check it meets Australian requirements for public health and safety and compliance with Australian food standards under the *Imported Food Control Act 1992.* The relevant Australian food standards are those contained within the Australia New Zealand Food Standards Code.

The department works with portfolio industries and within government on country of origin labelling issues, and on the inspection of imported foods at the border.

Australia's Country of Origin Labelling Framework

The Australian food regulatory system involves all three levels of government: the Australian Government (through the Food Standards Australia New Zealand and the Health, Industry and Agriculture portfolios); state and territory governments; and local governments.

Food Standards Australia New Zealand is the independent statutory authority responsible for the development and variation of food standards in Australia and New Zealand. The standards are set out in the Australia New Zealand Food Standards Code (the Code). Food safety and preventative health are overarching principles for guiding decisions about food labelling regulation in Australia. Food manufacturers must comply with all relevant standards as set out in the Code.

The Code is also referenced in food import and export regulations administered by the Department of Agriculture.

In addition to the work of the Department of Agriculture, the Australian Government Industry portfolio has overarching policy oversight of Australia's food processing industry policy and the country of origin labelling provisions of the *Competition and Consumer Act 2010* (CCA). The CCA contains prohibitions against misleading or deceptive conduct and against false or misleading representations, including in relation to the place of origin of goods. The CCA specifies that, where goods satisfy certain requirements, it is permissible to make specific origin claims in relation to those goods without contravening the law. Claims such as 'Product of', 'Grown in', and the general claim (usually referred to as the 'Made in') are established in this way.

The Code's *Standard 1.2.11* imposes a mandatory obligation on food suppliers to label the origin for most food products for retail sale in Australia which applies equally to domestically produced and imported foods. The country of origin requirements apply to food for retail sale, and cover all packaged food and unpackaged fresh or processed fruit, vegetables, seafood, pork, beef, lamb and chicken sold in Australia. Seafood offered for sale in the supermarket is required, under the Code, to display a clear country of origin statement which allows consumers to make informed purchasing decisions.

The Code also seeks to prevent misleading or deceptive conduct regarding the label on a package of food. In particular, *Standard 1.2.2* of the Code (Food Identification Requirements) requires the prescribed name of the food or a name or description of the food sufficient to indicate the true nature of the food. In addition, the consumer law prohibits misleading or deceptive conduct and false or misleading representations.

Food manufacturers are required to label food with a name or description sufficient to indicate the true nature of the food. They are also required to provide details on lot identification and name and address of the supplier. Standard 2.2.3 – Fish and Fish Products of the Code sets out the interpretation of the term 'fish', but does not define specific names for fish. The standard also includes requirements to label certain formed or joined fish products with safe cooking instructions.

The Code also requires the ability to track any food through all stages of production, processing and distribution (including importation and at retail). Traceability typically means movements can be traced one step backwards and one step forward at any point in the supply chain. *Standard 3.2.2 - Food Safety Practices and General Requirements* in chapter 3 of the Code covers the "one step back and one step forward" elements of traceability under Clause 5 (2) Food receipt and Clause 12 Food recall. The level of traceability extends to being able to

identify the source of all food inputs including raw materials, additives, other ingredients and packaging.

State and territory governments, together with local governments, are responsible for monitoring compliance of food with legal requirements within their respective jurisdictions and responding to food safety incidents. It is their role to develop and administer legislation in their jurisdictions, which gives legal force to the requirements of the Code. Misrepresentation of food products is enforced under 'misleading conduct' provisions of the Food Acts or consumer law. False and misleading representations on product labels can be enforced under food legislation as well under a number of regulatory frameworks including the *Commerce (Trade Descriptions) Act 1905* (CTD) and the Australian Consumer Law.

International Labelling Requirements and Trade Issues

Traceability and labelling is attracting increasing attention in international fisheries management. Some countries are seeking more information on where and how seafood was caught and whether it is consistent with international, regional and domestic fisheries regulations. Unilateral market measures taken by an importing country can be trade restrictive in that they do not necessarily recognise equivalent or better arrangements put in place by other countries with differing approaches. Some, including the EU and the US, have already implemented market state certification requirements that have caused additional requirements for some Australian seafood exporters.

The Food and Agriculture Organisation of the United Nations has recognised that countries may disagree on the required details of labels and the veracity of processes, and that there is potential for labels to be trade barriers. There is also disagreement about the common commercial naming of fish species. Peru and the European Union have recently disagreed on which species qualify for the sardine label in the European market. World Trade Organisation agreements already include labelling in the Agreement on Technical Barriers to Trade. However, as requirements to labels increase and become more complicated, special attention is necessary when understanding bilateral and multilateral trade negotiations.

Australian fish products exported to the European Union are required to be accompanied by government verified documentation in accordance with the European Community (EC) Regulation 1005/2008 to prevent, deter and eliminate IUU fishing. The regulation was introduced on 1 January 2010 requiring all 'fishery products' entering the European Union to be accompanied by documentation certifying that product was caught legally. Australian fish exporters are complying with the regulation through paper-based systems administered by the Australian Fisheries Management Authority for Commonwealth managed fisheries, and by State and the Northern Territory agencies as appropriate.

The European Union has also introduced new fish labelling rules (*Regulation (EU) No 1379/2013 of the European Parliament of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products*), which will apply from 13 December 2014. The rules are aimed at allowing European consumers to see where or whether fish were caught or farmed, and the species. The laws cover both wild caught and aquaculture fish products. The law requires fishery and aquaculture products to be labelled; or for retail sale of non-prepacked products, the mandatory information is to be provided by means of commercial information such as billboards or posters.

Labelling in the Food Service Sector

The Australian Code does not require country of origin labelling for food sold for immediate consumption in restaurants, cafes or other outlets. However, food service outlets can voluntarily implement labelling schemes promoting the source of their seafood on menus and menu boards provided this information complies with the Australian Consumer Law. Detailed information on country of origin labelling requirements is provided in the Australian Competition and Consumer Commission publication 'Where does my food come from?' at www.accc.gov.au/publications/where-does-your-food-come-from.

In November 2008, the Northern Territory Government put laws in place requiring licensed fish retailers advertising seafood for sale to the public for consumption; to label seafood as imported if it has not been harvested in Australia. This includes fish and chip shops, restaurants, cafes, bistros, hotels, motels and delicatessens in supermarkets.

In June 2011, the Northern Territory Seafood Council released a report on the analysis of the Northern Territory's labelling laws, funded by the Fisheries Research and Development Corporation. The report showed a poor knowledge of the laws in the general community. However, it also included the following observations:

- after freshness, country of origin is the second most influential factor for seafood
- the cost to the food service sector of implementing and complying with the legislation was generally low and—businesses appeared to adjust quickly, with the majority able to comply within a month
- the source of seafood has not changed dramatically as a result of the labelling laws, but there has been a drop in imported product provided by seafood wholesale.

The Northern Territory is the only jurisdiction in Australia in which it is compulsory for seafood in the food service sector to identify whether it is sourced from Australia or overseas.

Extending mandatory origin labelling to seafood sold in the food service sector throughout Australia would add regulatory burden and cost. It would cause regulatory inconsistency because no other food served in the service sector is required to have country of origin labelling.

An independent review of food labelling law and policy titled *Labelling Logic; Review of Food Labelling Law and Policy (2011)*, commissioned by the Australia and New Zealand Food Regulation Ministerial Council, recommended that Australia maintain the current mandatory requirements for country of origin labelling for all unpackaged seafood for retail sale.

Any changes to labelling laws for seafood would need to be considered with regard to a rigorous cost and benefits analysis.

Voluntary Labelling

A voluntary Australian Fish Names Standard (AS SSA 5300) has been published which provides guidance on standard fish names to be used in Australia. Inconsistent use of fish names is confusing for consumers and can affect consumer confidence in the quality and safety of seafood. The Australian Fish Names Standard is a voluntary code prepared by Seafood Services Australia to establish consistent names for fish species so consumers can make informed purchasing decisions. The Australian Fish Names Standard is referred to in the Code, but the Code does not mandate compliance with the standard. The government encourages the

development of Australian Fish Names Standards especially where they reflect consumer trends and preferences.

Another voluntary scheme is the Common Language Group (CLG), created with support from the Fisheries Research and Development Corporation, which aims to create and communicate a common understanding of the issues associated with the use of Australian aquatic ecosystems and resources.

Voluntary schemes do not require take up of all in the industry, but those that do are nevertheless bound by the Code and consumer laws regarding misleading information.