National Foods Limited

SUBMISSIONS TO THE SENATE ECONOMICS COMMITTEE

INQUIRY INTO THE *FOOD STANDARDS AMENDMENT (TRUTH IN LABELLING LAWS) BILL 2009*

16 October 2009

1. About National Foods

National Foods Limited (**National Foods**) is one of Australia's largest food and beverage companies, with core activities in juice, milk, fresh dairy foods, soy beverages and speciality cheese.

National Foods is a wholly owned subsidiary of Kirin Holdings (Australia) Pty Ltd., one of the largest global brewers. National Foods was created in 1991 through the amalgamation of several dairy and food related businesses with brand names and histories dating back to the 1800s, including The King Island Dairy Company Pty Ltd, a speciality cheese manufacturer, and Berri Limited, the manufacturer of some of Australia's most popular juice products.

National Foods has suppliers in every major dairy region in Australia and sources the vast majority of its raw milk from those regions. National Foods is also the largest citrus and fruit processor in Australia and packages nearly half of all fruit beverages in Australia. This means that National Foods purchases one in every four oranges and crushes approximately 100 tonnes of fresh citrus fruit annually.

With production facilities and sales offices in every Australian State as well as New Zealand, Singapore, Malaysia (ice-cream) and Indonesia (juice), National Foods employs about 4,500 people.

The company is the only milk and juice business servicing the entire Australian market. It also exports cheese to many countries throughout the world, while juice, milk and fresh dairy products are exported primarily to the Asian region.

2. Support of Other Submissions

As a major food and beverage producer in Australia, National Foods is pleased to have the opportunity to comment on the *Food Standards Amendment (Truth in Labelling Laws) Bill 2009* (**Truth in Labelling Laws Bill**).

National Foods has had the benefit of reading the submissions of the Australian Food and Grocery Council (**AFGC**) and the Australian Dairy Industry (**ADI**). National Foods agrees with the points made in the submissions of both the AFGC and ADI and commends them to the Committee.

For the reasons set out in those submissions and for the reasons set out below National Foods opposes the Truth in Labelling Laws Bill.

2.1 Non-compliance with the process for standard development

As mentioned in paragraph 2.1 of the AFGC Submission and paragraphs 2.1 and 2.2 of the ADI Submission, the *Food Standards Australia New Zealand Act 1991* sets out the process for the development of standards in the *Australia New Zealand Food Standards Code* (**Code**). The Truth in Labelling Laws Bill attempts to bypass the processes already in place for standard development which have been set up to ensure that the interests of all parties and all possible options are considered before an existing standard is changed or removed or a new standard introduced. Nothing in the Truth in Labelling Laws Bill or the Explanatory Memorandum explains the basis for this avoidance of the established processes, nor in the opinion of National Foods is there any valid reason, policy-based or otherwise, for such avoidance. National Foods therefore objects to the Truth in Labelling Laws Bill on the basis that it does not comply with the requirements for development of standards.

2.2 Inconsistency with existing laws

As discussed in paragraph 2.2 of the AFGC Submission and paragraph 2.3 of the ADI Submission, the issue of country of origin labelling for food and beverage products is already covered in detail by Standard 1.2.11 (Country of Origin Requirements) of the Code and in various provisions of the *Trade Practices Act 1974* (Cth)(**TPA**).

The provisions in both the Code and the TPA were developed following extensive consultation and a consideration of the potential benefits and costs to both industry and consumers. National Foods believes that the current legal framework does not require change in the manner proposed by the Truth in Labelling Laws Bill as it already provides that manufacturers take appropriate steps to ensure that consumers are not misled as to the origin of food and beverage products (or if that occurs that action can be taken against the offenders).

Further, the Australian Competition and Consumer Commission (**ACCC**) is very active in the area of country of origin labelling, including in relation to food and beverage products, and has taken action against companies that are not complying with the requirements under the TPA. We set out below a summary of a couple of the recent actions the ACCC has taken in this area. National Foods submits that this demonstrates that the current legal framework governing country of origin labelling is operating in the manner intended and adequately protects the consumer interest in the origin of food products.

Recent place of origin actions by the ACCC

100% Australian Made & Owned: A company called Bevco Pty Ltd labelled a number of its products as "100% Australian Made & Owned", despite the fact that the products were largely made up of imported juice. Some of these products contained up to 99.9 per cent imported reconstituted juice. Following an investigation by the ACCC, Bevco Pty Ltd

provided the ACCC with a court-enforceable undertaking to refrain from using the label, publish corrective advertising, and establish and implement a trade practices law compliance program.

ACCC v Harvey Fresh (1994) Limited [2009] FCA 853: In August 2009, the Federal Court declared that between November 2008 and May 2009, Harvey Fresh represented on packaging of a particular cheese product that it was produced in Western Australia when, in fact, it was produced in Victoria. This was as a result of proceedings commenced by the ACCC in May 2009. The Court ordered an injunction preventing Harvey Fresh from making any similar claims in the future, awarded costs to the ACCC, and ordered Harvey Fresh to implement a trade practices compliance program.

2.3 Impact on industry and consumers

As set out in paragraphs 2.2.1, 2.2.2, 2.2.3, 2.3, 2.4 and 2.5 of the AFGC Submission and paragraph 2.4 of the ADI Submission, the changes proposed by the Truth in Labelling Law Bill would place an excessive burden from a costs and logistics perspective on food and beverage manufacturers and ultimately result in increased costs for consumers, without a resulting benefit. These costs are discussed in more detail below in relation to each of the changes proposed in the Truth in Labelling Laws Bill.

2.4 Proposed Clause 16A(1)(a)

As discussed throughout the AFGC Submission and in paragraph 2.4 of the ADI Submission, it is unnecessary and overly burdensome to prescribe that the term "Australian" only be permitted to be used for products which have 100% Australian content and which are entirely made in Australia. While National Foods is proud of its Australian heritage and the fact that it uses Australian ingredients in its products, there are circumstances where it has no choice but to include imported ingredients.

As submitted by both the AFGC and ADI, many raw ingredients used in food and beverage products are seasonal and therefore are not available in Australia year round, or if they are the costs of those products at certain times is prohibitive (and would result in the cost to the consumer being too great for the product to be produced). There are also times where there are supply shortages due to poor yields and natural events such as floods, drought and insect plagues. In addition, if National Foods needs to ensure its products only contain local ingredients, lack of supply is likely to result. This is because sometimes National Foods' suppliers change the raw ingredients within the products they supply to National Foods to contain some imported ingredients (and this is outside the control of National Foods).

Further, the Australian food and beverage manufacturing market, on the world scale, is a small one and already faces supply issues for the reasons discussed in the paragraph above. If this proposed law comes into effect, it will provide a disincentive for

manufacturers to use imported products. While National Foods acknowledges that there is some merit to that, it will create further supply issues as manufacturers will all attempt to source ingredients from an even smaller pool of suppliers, the ultimate result being a lack of supply of finished products to consumers.

If the proposed legislation became law, as discussed in paragraph 2.2.3 of the AFGC Submission, to address this requirement, National Foods would need to develop a range of labels for every product they produce to accommodate when changes occur to the composition of ingredients (when they include or do not include imported ingredients) and where aspects of products are made or produced. In some instances the rapid response required to align labelling with available ingredients would be difficult to manage (ie, it would be challenging to ensure labels changed in time with ingredient changes) and could result in issues such as product recalls and labelling being misleading (ie, the wrong packaging being used for the wrong ingredient mix) despite all necessary precautions being taken to ensure that does not occur.

In National Foods' experience, there can be little notice given by suppliers when ingredients are not available or where supplies are likely to fall short of required volumes based on actual sales and sales forecasts. Moreover, the cost of having multiple labels created and having to change those labels on a regular basis is also excessive and entirely outweighs any benefit (of which National Foods believes there is none to be gained) achieved by requiring these changes. Accordingly, National Foods submits that this is not a viable option and would result in excessive costs for industry and potential confusion for consumers (with product labels changing over and over again and the potential for errors).

Alternatively, National Foods would not make these products, the result of which is of most detriment to consumers who would be deprived of choice in relation to food and beverage products.

2.5 Proposed Clause 16A(1)(b) and (c)(i)

As discussed in paragraph 2.2 (and in particular 2.2.1) of the AFGC Submission, it is unnecessary, impractical and could lead to overall inconsistencies (and therefore misleading content) on product labels for manufacturers to be required to state that the product is imported and for juice products to have the percentage of the product made from imported ingredients on the front label in large font (15mm for the imported statement and 25mm for the percentage statement).

Under the existing legal framework, manufacturers are already required to disclose the presence of imported ingredients on their product labels. In particular, subclause 2(1) of Standard 1.2.11 of the Code requires the product label of food and beverage products to contain:

(a) a statement that identifies where the food was made or produced; or

(b) a statement that identifies the country where the food was made, manufactured or packaged for retail sale and to the effect that the food is constituted from ingredients imported into that country or from local or imported ingredients as the case may be.

Further, sections 65AA-AN of the TPA provide specific rules regarding how to determine when a product is a "product of [a country]" or "made in [a country]".

Because this information is already required to be present on the product label of food and beverage products, this information is already easy for consumers to determine by a cursory read of the information on the label. National Foods believes that consumers are very savvy when it comes to product labelling and are increasing aware of what labels are required to contain. Accordingly, National Foods submits that it is unnecessary for another version of this information to appear on the front label of a product.

Further as discussed in the AFGC Submission, it is almost impossible for such information to be included on the front label of many products given the size of product labels and the amount of information that is already legally required to be contained on such labels. We note, for example, that the Final Report recently issued by the Preventative Health Taskforce proposes further front of pack labelling for various nutritional information. In addition, National Foods, like many other manufacturers in the food and beverage industry, likes to follow best practice and includes "thumbnails" on the front label on many of its products. National Foods therefore submits that consumers are already provided with sufficient information to make informed choices about the products they are consuming, and no further information is required.

More importantly from the perspective of consumers, it may be misleading to have the words "imported ingredients" or similar in 15mm font on the front label where the imported ingredient in a product is one of the smaller, less significant ingredients and the main or core ingredient is Australian. By being required to display the statement "imported" on the front label, not only is the label likely to mislead consumers into believing that the main ingredient in the product is imported when that is not the case, but the overall impression given by the product is likely to be misleading.

Requiring the percentage of imported ingredients in juice products to be stated would also place a burden on juice manufacturers that would be almost impossible to comply with for many juice products. As discussed in detail in paragraph 2.2.1 of the AFGC submission, where particular ingredients (and in particular compound ingredients) are sourced from third parties, it is often not possible to determine with any degree of accuracy the amount of some ingredients contained in products. Many suppliers elect not to disclose such information on the basis that the information that is confidential to them (and they would lose their market advantage if they did disclose it), and many also reserve the right to replace local ingredients with imported equivalents when supply runs short. Accordingly, in

reality, in many instances it would be impossible for manufacturers to determine the exact percentage of imported ingredients a product contains.

2.6 Proposed Clause 16A(1)(e)

As discussed in paragraph 2.2.2 of the AFGC Submission, excluding packaging costs from the assessment of the percentage of the product which is Australian, would have the effect of removing the incentive for manufacturers to source packaging and labelling locally. National Foods submits that this is contrary to what is alleged to be the intent of the Truth in Labelling Laws Bill which is to encourage the use of Australian ingredients and Australian production for the manufacture of food and beverage products.

3. Specific Comments on the Proposed Bill

National Foods also wishes to address other aspects of the Truth in Labelling Laws Bill which were not addressed in detail in the submissions of the AFGC or ADI. National Foods' comments on those other issues are set out below.

3.1 Requirements specific to juice products

Proposed clauses 16A(1)(c) and (d) only apply to juice products and (d) only in relation to orange juice products. It is unclear to National Foods why juice products have been singled out to comply with additional requirements in relation to labelling. There is no logical reason for this distinction or requirement for additional labelling by the juice industry.

3.2 Proposed Clause 16A(1)(c)(ii)

This clause provides that for products containing juice, where the product contains juice concentrate, the percentage of juice concentrate present in the product must be stated on the front label in letters or numbers of at least 25mm.

Fruit juice is defined in clause 1 of standard 1.2.4 (Fruit Juice and Vegetable Juice) of the Code to include "products that have been concentrated and later reconstituted". Most food and beverage products, including fruit juice products are required to contain an ingredient list. Clause 4(b) of Standard 1.2.4 (Labelling of Ingredients) of the Code requires ingredients to be declared using "a name that describes the true nature of the ingredient". Therefore, where that ingredient is a concentrate, to comply with this clause in the Code, the manufacturer must declare when the product contains concentrate so that the ingredient is properly described. This is commonly done by describing the product as containing "reconstituted juice"[1]. This is common industry practice in relation to juice products which are made from concentrate and, National Foods submits it is understood by

[1] Note: reconstituted juice is made by adding water to concentrate, however, clause 3 of standard 1.2.4 of the Code contains an exception which provides that the water does not need to be listed as an ingredient in its own right.

consumers. Therefore the fact that a juice product contains concentrate is currently made clear to consumers. Standard 1.2.4 of the Code regulates how ingredients need to be declared in the ingredient list, therefore, it is also made clear to consumers that the reconstituted juice component of the product is not the only ingredient where that is the case. National Foods submits that there is no additional benefit to be gained by specifying the percentage of concentrate on the front label.

There would also be significant costs for manufacturers involved in relabelling all products to which this applied and from a practical perspective, it is almost impossible for such information to be included on the front label of many products given the size of product labels and the amount of information that already, by law, must be provided on such labels. This would be doubly so where products were required to modify their labels to comply with each of proposed clauses 16A(1)(b), 16A(1)(c)(i) and 16A(1)(c)(ii). It is National Foods' view that all of this additional information would have the impact of further confusing rather than clarifying to consumers what the products contain.

In addition, the consumer protection provisions in the TPA prohibit corporations from engaging in conduct which is misleading or deceptive or likely to mislead or deceive. This prevents a manufacturer from representing (by words or images) that a product that contains concentrate, is made for example, from only fresh juice. In this regard, we refer the Committee to two recent decisions where the ACCC took action against companies which were using statements on their product labels that misled consumers as to the nature of the juice contained in the product. National Foods submits that the existing legal framework ensures that manufacturers produce adequate information about the presence of concentrate in juice products and that consumers are not being misled in that regard (or if that is occurring, the ACCC is taking action to ensure such conduct ceases).

Recent relevant actions by the ACCC

ACCC v Harvey Fresh (1994) Limited [2009] FCA 853: In May 2008, Harvey Fresh (1994) Ltd acknowledged that the "100% juice" claim on the label of its 250mL Apple & Blackcurrant product was incorrect, and may have misled consumers. Although the product label contained the words "100% juice" and "Apple & Blackcurrant", the product actually consisted of apple concentrate, blackcurrant flavour, grape skin extract and colour 466. The ACCC accepted court-enforceable undertakings from Harvey Fresh.

ACCC v Entee Food & Beverage Distributors and Wholesales Pty Ltd FCA (21 August 2001): The Federal Court held that Entee Food & Beverage Wholesalers & Distributors Pty Ltd breached the misleading and deceptive conduct provisions of the TPA by making inaccurate claims on the labels of its "Darwin Squeezed Orange Juice" and "Orange Juice - Australian Squeezed" labels. The labels claimed that the products were a "product of Australia", "Australian Squeezed", "Darwin Squeezed", "pure Australian fruit" and "locally

squeezed", despite the fact that the products contained 15% reconstituted orange juice which was imported from Brazil.

3.3 Proposed Clause 16A(1)(d)

This clause provides that where any drink is made partly or wholly from juice derived from orange skins, the product must not be described as being derived from orange juice.

National Foods takes the position that where orange skins are used in the creation of a beverage (typically in fruit drinks and cordials), the term "juice" is not used. Accordingly, National Foods submits that the same points made in relation proposed clause 16A(1)(c)(ii) apply here in relation to this proposed new requirement. The Code specifies (in clause 1 of standard 2.6.1) how fruit juice is defined and sets out the requirements for ingredient labelling of such products (in standard 1.2.4). In addition, the provisions of the TPA prohibit corporations from making claims that are likely to mislead or deceive. Therefore, if the term "orange juice" is used in relation to a product which consumers would not believe to be "orange juice", the ACCC (or in fact any other party) can take action in relation to that claim if they believe it is misleading. Given these existing legal requirements, it is the view of National Foods that there is no need for this additional rule in relation to "orange juice". It is already clearly covered by the existing legal regime.

4. Conclusion

In conclusion, National Foods reiterates its view that it is opposed to the Truth in Labelling Laws Bill and submits that the current legislative framework already ensures that the interests of industry and consumers are balanced and that consumers are not misled as to the origin of products and the ingredients they contain. If the changes proposed in the Truth in Labelling Laws Bill were introduced they would result in significant cost increases for industry and ultimately for consumers without any discernible resulting benefit.

National Foods Limited
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