



Country of origin labelling and the dairy industry

March 2019



The Australian Government has introduced new country of origin labelling rules for food products. If you supply dairy products in Australia, you need to be aware of this new law.

The ACCC promotes compliance with these new rules. This factsheet has been developed to assist the dairy industry to comply with the *Country of Origin Food Labelling Information Standard 2016*. It is intended to supplement the information in the ACCC's [Country of origin food labelling guide](#) and provides responses to common industry questions.

Please note this document **does not** constitute legal advice. The ACCC always recommends that businesses seek independent legal advice when deciding which labels to use for their products.

The Standard

The *Country of Origin Food Labelling Information Standard 2016* was made under the Australian Consumer Law (ACL). It regulates the type and amount of information businesses must provide on the labels for food offered or suitable for retail sale. The Standard provides consumers with clearer, more meaningful information about the food they buy. For most foods, the labels will also tell consumers what percentage of the ingredients came from Australia. From 1 July 2018, food products must be labelled according to the requirements of the Standard. Businesses that don't comply with the Standard are likely to breach the ACL and risk penalties of up to the greater of \$10 million, three times the value of the benefit received, or where the benefit cannot be calculated, 10 per cent of annual turnover in the preceding 12 months for corporations and up to \$500 000 for individuals.

Note: If you had to provide origin information under the *Australia New Zealand Food Standards Code*, you will have to label your products under the Standard.

Labelling requirements

All food covered by the Standard requires country of origin labelling. However, the Standard imposes different requirements depending on whether a food:

- is a **priority** or **non-priority** food, and
- was grown, produced, made or packed in Australia or another country.

All foods, with the exception of the seven non-priority food categories, are priority foods. The non-priority food categories are:

1. seasoning
2. confectionery
3. biscuits and snack food
4. soft drinks and sports drinks
5. tea and coffee
6. alcoholic beverages
7. bottled water.

Most dairy products, including milk, cheese and cream are priority foods. However, some foods including ice cream, sorbet, and ready-to-drink coffee beverages are non-priority foods.

The labels

While the content and appearance of labels will vary between individual food products, it's possible to divide labels into three broad types.

Three-part 'standard mark'—Mandatory for **priority foods** grown, produced or made in Australia.

Kangaroo logo

Bar chart

Explanatory text



Two-part 'standard mark'—Mandatory for most **priority food** items packed in Australia. It may also be used for imported foods that contain Australian ingredients.

Bar chart

Explanatory text



Country of origin statement—A text-only label that is used for:

- Non-priority food
- Imported priority food

Made in the USA

Made in the USA

Note: Businesses may choose to adopt a higher standard of labelling, provided they meet the requirements to use that label. For example, an Australian-made ice cream could be labelled with a three-part standard mark even though the food would only be required to carry a country of origin statement.

Key claims

'Grown in'

'Grown in' means that the food was actually grown in that country or came from something that grew there.¹

A priority food with multiple ingredients can only claim to have been 'Grown in Australia' if it's comprised of **exclusively** Australian ingredients.

Non-priority and imported foods with multiple ingredients can claim to have been 'grown in' a country if all of the significant ingredients are from that country and virtually all processing occurred there.

Note: This means that to make a 'Grown in Australia' claim about a priority food, the ingredients must be **100 per cent** Australian. No foreign ingredient can be included in the product.

'Produced in'/'Product of'

'Produced in'/'Product of' generally means that all of the significant ingredients were grown or wholly obtained in that country and virtually all processing occurred there too. As an example, milk is commonly labelled with a 'product of' claim.

Note: However, as with 'Grown in Australia', a priority food can only claim to have been 'Produced in Australia' if it's comprised of **exclusively** Australian ingredients. No foreign ingredient can be included in the product.

'Made in'

'Made in' means that the food underwent its last **substantial transformation** in the country claimed.

'Packed in'

'Packed in' is used for foods that cannot claim to have been grown, produced or made in a single country.

Making a 'made in' claim

The 'made in' claim will be important for manufacturers in Australia who use imported ingredients.

A food with imported ingredients is 'substantially transformed' if processing results in a product that's fundamentally different from each imported ingredient that went into it. A change in form or appearance alone won't be sufficient; the end product must be fundamentally different in **identity, nature or essential character**.

Examples

- If you combine imported starter culture with Australian milk and salt to make cheese, we think you could safely label the cheese as 'Made in Australia'. In our view, the end product (the cheese) is fundamentally different from the imported starter culture (i.e. a substantial transformation has occurred).
- If you import cheese, grate it and add a non-stick coating, we don't think you'd be able to say you 'made' it in Australia. In our view, this minor change to the form of the imported cheese has not created a fundamentally different product (i.e. a substantial transformation hasn't occurred).

Foods/ingredients that are 'grown' or 'produced' in a country can automatically also claim that they were 'made' there. This means they don't have to be transformed into something fundamentally different in order to make a 'made in' claim.

Example

The process of heat-treating fresh milk is unlikely to create a 'fundamentally different' product. However, if the fresh milk is from cows raised in Australia, you could say that the product is 'Australian Made' as it was 'grown/produced' in Australia.



¹ See s. 8 of the Standard for more information.

Calculating Australian content

Businesses **must** disclose the proportion of Australian ingredients in a food if it displays a three- or two-part standard mark. The Standard sets out rules on how to do this calculation.

This proportion must be expressed as either the:

- minimum Australian content or
- average Australian content.

The calculation is always based on the **ingoing weight** of ingredients **prior** to processing.

What counts as an ingredient?

In general, **everything** that goes in to a food counts as an ingredient. However, there are two exceptions:

- Processing aids² don't count as 'ingredients' (e.g. rennet).
- The water in a liquid packing medium doesn't count as an ingredient if the packing medium isn't generally consumed as part of the food (e.g. the brine in a packet of feta cheese is usually discarded, so the water in the brine doesn't count as an ingredient).

Note: The Standard allows businesses to provide additional information about a food, which may be of interest to consumers. For example, businesses may highlight the origin of individual ingredients in their country of origin claim, provided the ingredient was sourced exclusively from the country named.



Food additives

Food additives are ingredients under the Standard because, unlike processing aids, they continue to perform a technological function in the end product.

Food additives **must** be included in the calculation when working out the Australian content in your products.

Examples of additives include:

- an anti-caking agent added to salt to prevent the product from clumping
- thickener added to a custard
- preservative in yoghurt
- acidity regulator in ricotta cheese.

Starter culture

Starter cultures in dairy products are unlikely to be processing aids under the Standard. As such, they should be counted as ingredients when determining the proportion of Australian content in a food item.

Where imported starter cultures are used to make priority foods in Australia (e.g. cheese, yoghurt or cultured butter), a 'Grown in Australia' or 'Product of Australia' standard mark label should not be used for those foods as the content is not exclusively of Australian origin.

In this scenario, businesses should use the three-part standard mark with a 'Made in Australia' claim.

Salt

Salt is an ingredient for the purposes of the Standard. As salt is not 'grown' within the meaning of the Standard, it will only count as an 'Australian' ingredient if it was 'produced in' Australia. This means that it must have been obtained in Australia **and** virtually all processing must have occurred here.

False and misleading representations

In addition to the Standard, businesses also have a general obligation not to mislead consumers. Under the ACL, businesses are prohibited from making false or misleading statements and claims, or engaging in misleading or deceptive conduct.

It's your responsibility to ensure any claims you make about your product, including about their origin, are truthful and accurate. If a reasonable conclusion from the use of particular words or images is something other than the truth, you're at risk of breaching the ACL.

Role of the ACCC

The ACCC is responsible for promoting compliance with the ACL, under which the Standard was made.

The ACCC does this by:

- providing guidance to businesses and consumers on their rights and obligations, and
- where necessary, taking enforcement action against businesses that breach the ACL.

While the ACCC can provide guidance on the application of the law, we don't have the power to give private legal rulings.

² As defined in the *Australia New Zealand Food Standards Code*.

Questions and answers

How do I calculate the minimum Australian content in my product?

The calculation is as follows:

$$\left(\frac{\text{total ingoing weight of ingredients exclusively grown or produced in Australia}}{\text{total ingoing weight of all ingredients}} \right) \times 100$$

If you're trying to work out the average Australian content, you would use this same formula but would need to work out the percentage over a recent 12, 24 or 36-month period.

Please refer to page 7 for a practical example of when and how you might choose to display the average content on your label.

Example

A flavoured yoghurt is made using the following ingredients:

<i>Australian ingredients</i>	Total 123 kg
Milk	100.00 kg
Milk solids	12.50 kg
Cream	10.50 kg
<i>Imported ingredients</i>	Total 7 kg
Berry mix	6.50 kg
Vanilla bean	0.15 kg
Thickener	0.20 kg
Culture	0.15 kg

The calculation would be:

$$\left(\frac{123}{130} \right) \times 100 = 94.64\%$$

This would appear on the label as 94 per cent (rounding down to the nearest whole percentage). The bar chart would be shaded to 90 per cent.

Are protein powders/drinks 'food' for the purposes of the Standard? How should they be labelled?

Protein powders and drinks will be 'food' if they fall within the definitions of 'formulated supplementary foods' or 'formulated meal replacements' under the *Australia New Zealand Food Standards Code*. In the ACCC's view, these products generally won't fall under the 'soft drinks and sports drinks' non-priority food category. As such, these products should be labelled according to the requirements for priority foods.

Food products commonly contain compound ingredients.³ If a compound ingredient contains additives, do those additives need to be included in the calculation when working out the percentage of Australian content in the final product?

Yes, the additives in the compound ingredient must be taken into account when doing the calculation for the final product. If the additives are imported, they will count as an imported ingredient. Only the Australian grown or produced portion of the compound ingredient can count towards the Australian content in the end product.

Example

A cream cheese and sweet chilli sauce dip is made in Australia. The sauce is a compound ingredient containing imported thickeners, acidity regulators and colouring. These imported additives would count towards the overall ingoing weight of the ingredients in the sauce but would not count as Australian content.

If the sauce contains 90 per cent Australian content (and therefore 10 per cent imported content), only 90 per cent of the sauce added to the cream cheese can be counted as Australian.

Is infant formula a 'food for special medical purposes' and thus exempt from the Standard?

No. Infant formula is specifically excluded from the category of 'food for special medical purposes' and must be labelled according to the Standard.

Does the Standard apply to packaged food/food supplied to the food service industry?

This will depend on the form of the product that's being supplied.

If the packaged food is *suitable for retail sale* without any further processing, packaging or labelling, it will need to be labelled according to the Standard. This applies even if the supply isn't on a retail basis.

If the food *isn't* suitable for retail sale in the form it's being sold in, it doesn't have to comply with the Standard. However, if the purchaser requests origin information from you that they need to satisfy their obligations under the Standard, you must provide that information.

³ A compound ingredient is an ingredient in a food that is itself made up of two or more ingredients.

Will wet and/or dry blending different milk powders together result in a 'substantial transformation'?

In the ACCC's view, the mere wet and/or dry blending of wholly, or primarily, imported ingredients will generally not be enough to substantially transform the imported powders. Although blending may result in a more uniform mix of nutrients, we don't consider that it results in a **fundamentally different** product.

Example

Imported whey powder is blended with other imported milk products, fats and vitamins to create a protein powder.

Comparing the imported ingredients (mainly whey powder and milk products) with the end product (a dry powder consisting mainly of whey and milk products), it is unlikely the end product is fundamentally different in identity, nature or essential character.

Accordingly, a 'Made in Australia' claim could likely only be made in this situation if the main ingredients were grown or produced in Australia. If the main ingredients are wholly, or primarily, imported, the business should consider a 'Packed in Australia' claim.

In some cases, I will be able to make particular claims about my food after processing (e.g. health claims⁴). Does that mean I've substantially transformed the imported ingredients?

No. In the ACCC's view, the question of whether a product has been substantially transformed is a separate and different legal test.

Take, for example, an infant formula. Although the individual ingredients can't claim to be 'infant formula', this doesn't mean that combining them automatically results in a substantial transformation of the imported ingredients. In the ACCC's view, a closer analysis is required of the end product and how it differs from the ingoing imported ingredients.

Are custards and other non-frozen dairy desserts priority or non-priority foods?

Custard is likely to be a **priority** food and should be labelled as such. In the ACCC's view, it won't fall within the non-priority category of 'confectionery'.

Many other non-frozen dairy desserts are also likely to be priority items.

Are frozen yoghurt and other ice cream substitutes priority or non-priority foods?

In the ACCC's view, frozen yoghurt and other ice cream substitutes will come under the **non-priority** 'confectionery' category. This is because the definition of confectionery is broad and includes 'ice cream,⁵ edible ices (including sherbet and sorbet), flavoured ice blocks and other frozen confectionery'.

As such, these products would only require a text statement of origin, although you could choose to label them as if they were priority foods, if you wanted to and met the requirements to use that label.

What is the Standard's position on very small packages that can't fit the mark labels?

Priority foods sold in small packages with an external surface area of less than 100 cm², such as packages of individual servings of butter, don't have to use the full three-part or two-part mark labels. In this case, it will be sufficient if the relevant explanatory text is displayed in a clearly defined box on the packaging.

My business manufactures ready-to-drink beverages e.g. meal replacements or pre-mixed infant formula. Do I count the water in my products and, if so, what is its origin?

In this instance, the water is an ingredient in the food. As such, it should be counted when determining the proportion of Australian content.

Water will generally have as its origin the country in which it was collected or harvested. However, water used to reconstitute dehydrated or concentrated ingredients will be deemed to come from the country in which the dehydrated or concentrated ingredient originated. Any additional water (i.e. above what is needed for reconstitution) will have as its origin the country in which it was collected or harvested.

Examples

- If water collected in Australia is used to reconstitute Chinese milk powder, the water will be regarded as if it was from China when determining the proportion of Australian content in the food.
- If water collected in Australia is used to reconstitute Australian milk powder, the water will be taken to be Australian in origin.

⁴ Within the meaning of the *Australia New Zealand Food Standards Code*.

⁵ Ice cream refers to 'a sweet frozen food made from cream or milk products or both, and other foods, and is generally aerated.'

How do I account for water added for the purposes of blending that is subsequently removed via spray-drying? Is it an 'ingredient'?

In the ACCC's view, where water is added to assist blending and then deliberately removed during processing, it's likely that it is being used as a processing aid. This is because the water appears to be performing a technological purpose during processing but not in the food for sale.

If water is used as a processing aid, it should not be counted as an ingredient when calculating the proportion of Australian ingredients in your product.

Is there any special consideration under the Standard for products where the Australian content changes?

If a product states that it was 'Made in Australia from at least 95 per cent Australian ingredients', the proportion of Australian content in that food must be 95 per cent or more. If it isn't, the business could be in breach of the false, misleading or deceptive provisions of the ACL.

If you're concerned about variations in the proportion of Australian ingredients in your foods, you can instead make an average Australian content claim. An average content claim is based on the minimum proportion of Australian content in a food over a recent 12, 24 or 36-month period. If you use an average claim, you won't have to change your labelling if the percentage of Australian content goes up or down within a certain period.

If you use an average content claim, you will still need to provide consumers with a means by which to access information about the actual amount of Australian content in the particular batch available for purchase.

Note: You can only rely on an average Australian content claim for up to two years after the period on which it was based. After this time, you will need to recalculate the Australian content and update your labelling as necessary.

For example, if the percentage is based on the period from 1 July 2015 to 30 June 2017, it may be used on labels until 30 June 2019. A new calculation will be required from 1 July 2019.

If you're in need of more short-term solutions (e.g. due to an interruption in supply) you should consider practical solutions such as:

- having an alternate stock of labels on hand
- stickering over the country of origin label with updated information.

Who is responsible for ensuring the food is labelled?

Most dairy products will be offered for sale in a package. In this instance, the label should be attached at the time the food is packaged. As such, this responsibility could fall to the farmer, manufacturer, importer, processor or retailer. Even if you aren't the person who labels the product, you will need to provide origin information to others in the supply chain if they request it.

Where can I get further information?

The ACCC's *Country of Origin Food Labelling Guide* and a list of food labelling FAQs are available at www.accc.gov.au/cool. A webinar on the Standard is available from the ACCC's YouTube channel at www.youtube.com/user/ACCCvideos.

A style guide, labelling tool and other useful resources are available at www.business.gov.au. These tools can help you identify and download labels for your products.

If you have a specific enquiry, you can submit an online form at www.accc.gov.au/contact-us or call our Small Business Hotline on 1300 302 021.

Your industry association may also be able to assist with any enquiries you may have about the new food labelling requirements.

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