

4 May 2017



Department of Agriculture and Water Resources
GPO Box 858
Canberra City ACT 2601

By Email
foodimp@agriculture.gov.au

Dear Sir / Madam,

Re. The draft *Imported Food Control Amendment Bill 20XX* (the Bill) and *Imported Food Control Amendment Regulations 20XX* (the Regulation).

The Australian Beverages Council is the peak body representing the collective interests of the non-alcoholic refreshment beverages industry. Our membership is comprised of multi-national companies, small and medium business making up over 95% of the non-alcoholic beverage industry's production volume in Australia.

The Beverages Council supports the current draft Bill and Regulations and also proposes that the Department consider additional amendments to section 7 to align the existing trade sample regime with the Departments policy reform objectives.

It is understood that the purpose of the amendments to the Bill and Regulation is to strengthen the current risk-based management approach of imported food safety. The Beverages Council endorses and supports this approach.

The Beverages Council, acting on behalf of the non-alcoholic refreshment beverages industry in Australia, supports the draft Bill and Regulation. The Beverages Council specifically wishes to indicate broad support for the following amendments:

- Recognition of a foreign country's food safety system, where there is equivalence with Australia's food safety system – reducing delays in border clearance and the regulatory burden.
- Documentation of food safety controls throughout supply chain for higher risk food categories with a 12 month commencement after proclamation – addresses foods with possible consumer safety concerns. The Department acknowledging the increased burden on suppliers has allowed for time to prepare.
- Greater specificity and clarity on the classification of food subject to holding orders – reduces any hold up of unrelated products.
- Introduction of graduated enforcement scheme - aligns with the existing domestic scheme.

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Redefinition of trade samples

The Beverage Council wish to take this opportunity to comment on an existing definition in the Imported Food Control Act 1992, relating to trade samples.

For context, under the current regime if a food falls within the definition of a “trade sample”, it ceases to be a food to which the Act applies, effectively exempting it from the Imported Food Control Act regime.

Section 7 of the Act defines a trade sample as:

- a) *the food is imported for the purposes of scientific or commercial evaluation; and*
- b) *the food is not imported for consumption by any person; and*
- c) *the food is:*
 - i. *in liquid form and has a volume of less than 20 litres or such lesser volume (if any) as is prescribed by the regulations in respect of food of that kind; or*
 - ii. *not in liquid form and has a weight of 20 kilograms or such lesser weight (if any) as is prescribed by the regulations in respect of food of that kind.*

The Beverage Council believes that the above definition could be modernised as part of the current reform process. Currently, the definition makes it difficult for companies – many of whom have product innovation centres established overseas – from importing food for the purposes of commercial evaluation. This is for the following reasons.

The inclusion of both “scientific or commercial evaluation” within the ambit of Section 7 appears to be conflating two related, but very different purposes. Scientific evaluation is the testing and analysis of products – often to determine chemical or microbiological parameters. It is a narrow concept. Commercial evaluation is a broader concept that encompasses evaluations of a product to determine if it is suitable, or desirable, for sale. This can include label assessments for appearance and impact, physical samples for retailers to demonstrate the final form of a product, or – as is common for packaged beverages – actual consumption by potential retailers or consumers to assess taste and palatability.

In light of the above, the Beverage Council submits that the current restriction on “consumption by any person”, effectively makes the current trade sample definition meaningless. The precise point of importing trade samples from overseas is to test their suitability – in terms of taste and palatability – with both the trade and prospective consumers within Australia. This is most commonly done in controlled environments such as consumer market research focus groups. In order for these focus groups to be properly conducted, trade samples would need to be consumed.

Furthermore and in light of the above, the Beverage Council believes that the provisos in section 7(c) of the Act appear to be drafted with the narrower scope of “scientific evaluation” in mind. The



restrictions of 20 litres by volume for liquid foods or 20 kilograms by weight for solid foods may be suitable for scientific evaluation, but they are very low for the purpose of commercial evaluation as described above.

The Beverage Council recommends that the Department reconsider these thresholds, bearing in mind that higher volumes would be required for trade samples for the purposes of commercial evaluation.

Trade samples are vital to ongoing innovation and trade

Beverage Council members are concerned that the current wording is impeding product innovation and trade as it effectively prohibits them from importing overseas samples – of their own products or others – for the purpose of commercial evaluation. This is especially acute for members who have, or work with, overseas product development institutes or departments. The products they wish to import but current cannot are safe, are manufactured as per GMP and HACCP, and are suitable for consumption at the jurisdiction of origin. In addition, it is simply not practical or feasible for overseas product innovation institute to create consumer samples of Australian compliant food, in such small quantities, simply to comply with the existing regime.

Modernising the trade samples definition – even if it just to allow consumption of trade samples manufactured from jurisdictions that have approved food safety systems – would significantly assist the ongoing growth and trade of beverage companies in Australia.

Should the department consider, as does the Beverage Council, that Section 7 should be modernised, the Beverage Council recommends that:

- “scientific evaluation” and “commercial evaluation” should be modernised and defined within the Act;
- The current restriction on human consumption should be removed for trade samples; and
- The current literage and weight restrictions be modernised.

We thank The Department of Agriculture and Water Resources for the opportunity to provide this submission in support of the draft Imported Food Control Amendment Bill 20XX (the Bill) and Imported Food Control Amendment Regulations 20XX. If you wish to discuss any aspects of this correspondence please feel free to contact me on +61 4 2624 8563 or melanie@ausbev.org.

Kind regards,



Melanie Pauga
Technical and Regulatory Affairs Manager

