



# Export Council of Australia

The Voice for Australia's Exporters

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The Committee Secretary  
Senate Standing Committees on Economics  
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## Export Council of Australia Submission to the Senate Economics References Committee on the inquiry into third party certification of food

### 1. Background on the ECA

A not-for-profit, membership based organisation, the ECA is the peak industry body representing Australia's exporters and importers, particularly SMEs. With a membership base of 1,000 and a reach of 15,000, the ECA represents companies of all sizes and across a wide range of industry sectors, including services exporters. The ECA's core activities include research, advocacy, skills development and events. Some details on the ECA's work are below.

- 1.1. The ECA works collaboratively with a number of Federal and State Government Departments to advance the interests of its members and the broader business community. These include Efic, the Department of Foreign Affairs and Trade (DFAT), Austrade, the Department of Immigration and Border Protection (DIBP), the Department of Industry and Science, and the Department of Agriculture.
- 1.2. The ECA regularly provides submissions to government and its agencies on various reviews, as well as to parliamentary inquiries. These have included submissions relating to the Korea-Australia Free Trade Agreement (KAFTA) and the KAFTA Customs Bills, the Japan-Australia Economic Partnership Agreement (JAPEA) and the JAPEA Customs Bills, the Trade in Services Agreement (TiSA), and more recently the EMDG Review, the Inquiry into Australia's Treaty Making Process, the Inquiry into the Business Experience in Utilising Australia's Free Trade Agreements, the Inquiry relating to the China – Australia Free Trade Agreement (ChAFTA), and the review of the draft Cost Recovery Implementation Statement by the Department of Agriculture.
- 1.3. The ECA also releases annual Trade Policy Recommendations (**TPR**), and the latest document, TPR 2014/15, includes commentary and recommendations regarding the

Government's Free Trade Agreement (FTA) agenda and ways in which Government should work with industry to raise the level of understanding of FTAs.

- 1.4. In 2014 the ECA launched a longitudinal survey, Australia's International Business Survey (AIBS), with Austrade, Efic and the University of Sydney, which captures unique company level data on the Australia's international business activity. The first survey captured data from over 1,600 Australian exporters, making it the most comprehensive investigation into Australia's international business activity in more than 15 years.
- 1.5. AIBS 2015, which was released on 30 July 2015, resulted in the collection of fully completed and validated responses from 1,237 companies involved in international business. The findings of this report are distinctive and significant because they provide key insights into the nature, needs, concerns and future plans of the overall Australian international business community from the company perspective.
- 1.6. The ECA recently also released its "Advancing Trade Development" report, which examines the trade promotion activities offered by 10 of Australia's key export competitors including the United States, United Kingdom, New Zealand, and Singapore in a bid to encourage government to take a long-term, strategic approach to developing Australia's international trade.

## **2. Third Party Certification of Food**

The ECA is now pleased to make the following observations regarding third party certification of goods. However, in doing so, the ECA wishes to make clear that it is only commenting on this issue so far as it relates to food for export and its comments do not apply to certification of origin of goods are required to claim preferential status under Australia's FTAs.

The ECA does not provide certification services for product claims. The ECA neither encourages nor discourages it members regarding certification. As with any certification, each manufacturer or brand owner needs to decide for itself whether the commercial benefits of certification outweigh the costs.

The ECA would also like to note that it accepts the principles provided in the submission put forward by the Australian Food and Grocery Council's (AFGC) for this Inquiry and we endorse its approach

- 2.1. The ECA is aware that the term "certification" covers a broad range of activities, spanning from safety audits, through government licensing, to third party logo endorsements, to the origin of goods and to compliance with religious or dietary requirements.
- 2.2. The ECA believes that the provisions of section 5 of the Competition and Consumer Act 2010 (CCA) allow for extraterritorial effect of many provisions of the Consumer Law so that incorrect claims of third party certification of goods for export could still be subject to prosecution by the ACCC. The ECA recommends that the Committee ask the ACCC whether those provisions allow for adequate actions to be taken against incorrect or unsubstantiated claims of third party certification.
- 2.3. Third party certification is an important issue for Australian exporters. In some cases a specific certification might be required by law to export certain goods to a particular market. In other cases, third party certification may be required by purchasers of the products. There may also be commercial or market imperatives which dictate particular third party

certification. Indeed, in some instances a specific certification is compulsory before goods or product can be sold in a particular market.

- 2.4. Certain certifications can help create business opportunities in international markets and therefore, certification can be described as both a marketing tool and a quality assurance measure. Accordingly, other than where required by law or for other reasons, it becomes a commercial decision for an exporter whether the benefits of holding that certification outweigh the costs of acquiring it.
- 2.5. As a consequence of the comments in the preceding paragraph a manufacturer will only seek to obtain a certification if it feels it gets a benefit, and will discontinue certification if the benefit is not achieved. Where certification is only obtained and maintained if it delivers a commercial benefit, the ECA believes there is generally no requirement for intervention by Government in relation to the use of third party certification. However that situation may change in the circumstances described in paragraph 2.8 of this submission or where third party certification is dictated by law.
- 2.6. Except in instances described in paragraph 2.3 of this submission, third party certification is, in the majority of cases, not necessary to make a claim. In those cases, the value of the third party certification is linked to the credibility of the producer and manufacturer and the certifier and often there are multiple options for certification.
- 2.7. The ECA recommends that if a claim is made as to third party certification of food, whether by way of express claim of a particular quality or by the use a third party logo endorsement, then information as to the identity of the certifier and the basis on which they provide that certification should be available and accessible to consumers and/or retailers.
- 2.8. In general terms, the ECA believes that there are already a number of provisions that exist to deal with inappropriate claims of third party certification. In the absence of evidence of abuse of third party certification claims or evidence from the ACCC that the current provisions of the CCA and the Consumer Law afford inadequate protection, the ECA believes that there are only a few circumstances that may require additional government intervention in this area and that otherwise the current regime is adequate. These include:
  - Requiring producers and manufacturers who claim third party certification to provide details of who provided the certification, the nature of the certification provided and the basis on which it was provided. This would assist in transparency of the process. The details could be provided by mandatory links to websites being provided on labelling or by way of material being provided at point of sale.
  - Where a manufacturer is pressured or compelled to obtain a certification that it would not otherwise have obtained, whether through market coercion, or threats by certifiers of secondary boycotts or other adverse consequences.
  - If there are potential negative public health consequences from incorrect or inadequate claims of third party certification, in which case urgent action would be required based on current public safety regulation.
- 2.9. In the event that the circumstances set out in the preceding paragraph support action, then, other than urgent action required to protect public health and safety, the ECA recommends that the Government only intervene and impose further regulation following broad consultation and only then in a manner that imposes the least intrusive regulation. In doing so, government should only act in a manner consistent to the Regulator Performance Framework issued by the federal government in October 2014.

- 2.10. The ECA, through its trade policy work, continues to advocate for a reduction in over burdensome regulation and improvements to trade facilitation. Foods safety is clearly of paramount importance and Australia has an international reputation for robust food safety standards. The ECA recommends that the design of any potential regulatory program that affects food safety and third party certification of food be both inclusive and efficient.
- 2.11. Further, in the context of the position of exporters who rely on third party certification, the ECA also recommends that the government enters into arrangements with governments of export destinations so that third party certification of goods properly secured in Australia should have that certification recognised in those export destinations. That level of mutual recognition would not be compulsory but would be available to those exporters prepared to engage in a further level of examination of approval agreed by the two governments. Such a program could be established under the auspices of our FTAs or by other bilateral or regional agreements.

The ECA looks forward to providing further input and assistance where required.

Yours Sincerely

**Andrew Hudson**



Director and Chair of the Trade Policy Committee  
Export Council of Australia