The Parliament of the Commonwealth of Australia

THE TRADE PRACTICES AMENDMENT (ORIGIN LABELLING) BILL 1994

Report by the House of Representatives
Standing Committee on Industry,
Science and Technology

June 1994

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REPORT ON THE CONSIDERATION OF THE TRADE PRACTICES AMENDMENT (ORIGIN LABELLING) BILL 1994

REFERRAL OF THE BILL

1. The *Trade Practices Amendment (Origin Labelling) Bill 1994* was referred to the Committee by the House of Representatives on 11 May 1994 for report by 6 June 1994. The Minister for Consumer Affairs moved the motion referring the Bill to the Committee after the Opposition noted industry concerns about some elements of the Bill.

BACKGROUND

2. The purpose of the *Trade Practices Amendment (Origin Labelling) Bill 1994* as set out in the Explanatory Memorandum is to introduce a scheme to govern representations about the Australian origin of consumer goods, by inserting a new Division 1B into Part V of the *Trade Practices Act 1974.*

3. The Bill is the result of consultations with industry, consumers and consumer groups which have taken place over more than 18 months. In October 1992 the Government established two Working Groups to review the extent to which products currently provide an indication of their country of origin and to develop descriptor's for "Australian Made" and related terms. These two Working Groups were amalgamated as their membership was essentially the same.[1] The amalgamated Working Group sent a questionnaire to about 80 industry and community groups. 43 responses were received.

4. The preferred option in the Working Group report released in May 1993 was to limit the terms describing Australian origin to "Made in Australia", "Product of Australia", or "Produce of Australia". To qualify for these descriptors the goods must have acquired their essential character in Australia and not less than 85% of the cost of the goods must have been incurred in Australia. The labelling of goods which had some Australian input but did not meet these criteria would have been at the discretion of the manufacturer or supplier, subject to the wording being accurate and reflecting the process that occurred as well as providing an indication of the relative contribution to the goods from Australia and from overseas.

5. A further consultation process was entered into by the Government seeking industry and consumer responses to the report of the Working Group. Over 60 submissions were received on the report. In addition to formal submissions approximately 5,000 items of correspondence were also received. Many of the

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1 See Appendix III for a list of members of the Working Group.

recommendations of the Working Group were incorporated into the Bill, although the value added basis for determining whether goods could be classified as Australian products was abandoned in favour of a descriptive option for the labelling of consumer goods.

6. The Government's stated intention in introducing this scheme is to encourage Australian industry to label products which have their origin in Australia and to give consumers a reliable means of identifying Australian products. The scheme does not apply to goods intended for export; nor does it make any direct provision about representations on imported goods.

7. The Committee held a public hearing in relation to the Bill on 30 May 1994. A list of the witnesses at the hearing is attached at Appendix I and a list of submissions received is at Appendix II.[2]

ISSUES

8. The Committee raised with the Minister a number of issues concerning the Bill in its current form. These issues were based on views expressed in submissions received by the Committee as well as reservations held by individual members of the Committee. Each of these issues is detailed below, followed by the response of the Government and the Committee's conclusions and recommendations.

(a) Category Criteria

9. A number of submissions expressed the view that confusion will be created amongst consumers and industry by the two categories under which Australian products would be classified. The Tasmanian Government stated in its submission:

> "The restrictive nature of the Product of/Produce of Australia representation will mean that very few goods will be able to comply. For the distinction between the two categories to be meaningful to consumers, there will need to be a sizeable and extensive consumer education program."[3]

10. The Grocery Manufacturers of Australia argued that confusion would be caused because, for an imported product to be labelled [for example] "Product of Switzerland..." it would not have to meet, in its country of origin, the same conditions that an Australian product would have to meet in Australia to qualify for the "Product of Australia" label.[4] Several Members of the Committee were

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2 The Committee also used a number of relevant submissions from its recent inquiry into Government Purchasing Policies and the regulation of "Made in Australia" labelling. See Appendix II for a list of these submissions.

3 Submission no 4, p 4.

4 Submission no 10, p 2.

concerned that consumers might perceive some kind of qualitative difference between the "Product of ... " and "Made in ... " labels and regard an imported product with the "Product of ... " label as being superior to an Australian product with the "Made in ... " label.

11. The ACTU submission pointed to the potential for confusion to exist between the second category of "Made in Australia" and the Advance Australia Foundation's "Australian Made" certification mark. The ACTU argued that the perception of the public is that "Made in Australia" means that the place of origin of each major ingredient or component of the product is Australia. That is, "Made in Australia" should be defined in the Bill in the same way as "Product of Australia". The representation under section 65VE (2) for goods which acquire their essential character or quality in Australia would then become "Manufactured in Australia". In addition, it would be required that the place of origin of imported major ingredients be identified in goods labelled "Manufactured in Australia".

12. Some Committee Members were concerned that the basis on which products would qualify for the terms described in proposed section 65VE (2) is unclear. Specifically, the meaning of the word "major" in the phrase "each major ingredient or component" is not defined, either in the Bill or in the Explanatory Memorandum. Paragraph 16 of the Explanatory Memorandum says that:

> "'major' is not defined, as what will be considered major, or minor, will vary depending on the type of product. For example, in food products small amounts of imported seasonings and flavourings may be acceptable in a product labelled "Product of Australia", but in electronic goods the smallest components may be the most vital to the operation of the product".

13. The submission from the Minister stated that it is intended that guidelines "would deal in more detail with the questions of where the essential character of particular goods is acquired and which might be considered the major components or ingredients of certain products or product types". In its submission the Grocery Manufacturers of Australia stated that "the guidelines are critical to the effectiveness of the Bill and should be available before the Bill is enacted". However, the Minister said at the public hearing "It is usual practice, once you have legislation agreed to, to work out guidelines to assist industry" indicating that the guidelines will not be drafted until after the legislation is passed by Parliament.[5]

14. In order to clarify uncertainties the guidelines will be drafted at the request of and in consultation with industry. The Minister indicated a willingness to be flexible in formulating guidelines and was confident that the current concern some sections of industry have with the Bill will be overcome once guidelines have been formulated. **The guidelines, which have yet to be developed, will obviously be of great importance to industry in explaining how the provisions of the Bill would be interpreted in practice.**

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5 Transcript, p 10

15. In response to the claim that very few goods would be able to meet the conditions for a "Product of/Produce of Australia" label the Minister stated that there are many products, such as breads and breakfast cereals which would qualify.

16. The Minister pointed out that the current plethora of terms and symbols used to imply that a product is of Australian origin already causes considerable confusion. The most satisfactory way to achieve clarity is to attach definitions to a limited number of allowable terms. This would provide consumers with greater information and industry with a better means of promoting its products as being of Australian origin.

17. The Committee agrees that at present the use on labels of a wide range of words, pictures or symbols to claim Australian origin is very confusing. There are too many undefined terms in use which provides scope for those who wish to mislead the public. The objective of the Bill - to define the meaning of, and limit the number of, such descriptors - has the Committee's support. A well planned education campaign will obviously be required to ensure that the public understands the meaning of the descriptors approved under the Bill.

18. The Committee fully understands and sympathises with the desire of many consumers and consumer groups for a label which would indicate products made in Australia from 100% Australian ingredients or components. In practice, however, there would be very few products which could truthfully carry such a description. The "Product of Australia" or "Produce of Australia" description, as described in the Bill, is probably the best practical label to describe maximum Australian content as well as place of manufacture. The "Made in Australia" label described in the Bill would enable many additional products which also have a justifiable claim to being called 'Australian' to carry a label which indicates their place of origin. It is true that products carrying the "Made in Australia" label may be made using imported ingredients or components. However, they would be products in which the ingredients or components would have undergone a substantial degree of transformation in the production process. Their production in Australia helps provide employment and economic growth and this deserves their recognition as Australian products.

19. The "Australian Made" label and logo, promoted by the Advance Australia Foundation, have received a large measure of public recognition. The Committee notes that section 65VF of the Bill would allow the continued use of the label and logo in conjunction with one of the descriptors defined in the Bill.

20. Members of the Committee are concerned that in its current form the Bill leaves uncertainty for some sections of industry concerning the exact requirements for their product labels.

Recommendation 1

21. The Committee recommends that the Minister make a statement in Parliament on the procedures to be followed in formulating any guidelines and an explanation on the consultation mechanism. The Committee also recommends that the Minister provide an explanation of the interpretation and meaning of terms such as "major ingredient or component" and "essential character or qualities" in section 65VE so that those concerns of industry which are reasonable are addressed.

(b) Seasonal Variations in Supply of Inputs

22. Many Australian products are made from local ingredients which are subject to seasonal variations in availability. The concern was expressed that, during those periods when imported ingredients may have to be used, such products would be ineligible for the "Product of Australia" label. This would result in producers having to have the capacity to use different labels at different times of the year. This would obviously result in extra costs for those producers.

23. The Minister pointed out that such producers could use the "Made in Australia" label instead and, as many do at present, add an explanation that the ingredients are Australian subject to seasonal availability. It was stated that in many cases section 85 of the *Trade Practices Act 1974* would provide a defence against a charge of false or misleading labelling if the default is the result of some cause beyond the control of the defendant. However, in such cases, the defendant must demonstrate that he/she "took reasonable precautions and exercised due diligence to avoid the contravention".

24. The Smith's Snackfood Company recommended that this problem might be overcome by allowing the input requirements to be averaged over a three, four or five year period. In this way the requirement would allow for genuine shortfalls in supplies of Australian produce to be met by imports up to a set maximum level.

25. The Committee considers that the continued use of the "Product of Australia" label would not be appropriate if, owing to seasonal variations in supply of a major ingredient from local sources, an imported ingredient was to be used. This would dilute the meaning and value of the label. However, in many circumstances the use of the "Made in Australia" label would be warranted even when an imported ingredient had to be substituted for the local ingredient. Alternatively, in industries where it is practicable, companies have the option of using different labels at different times of the year depending on the source of the major ingredients. Clearly this would not be practicable in all industries. The Committee was not convinced that the defence under section 85 of the *Trade Practices Act 1974* would be readily applicable to the situation of seasonal variation in supply given the availability of the above labelling options.

Recommendation 2

26. The Committee recommends that the Minister's statement in Parliament describe the options available under the legislation for producers of goods who may be unable to source a major ingredient locally due to seasonal supply fluctuations.

(c) Phase-in Period

27. The amendments will result in some producers incurring substantial costs owing to the need to change the way in which they label their products. The costs involved are likely to vary depending upon the nature of the industry concerned, the existing means of packaging and the type of labelling used.

28. The Minister indicated that 12 months should be a sufficient phase-in period for most industry to conform, although there would be cases, some of which have already been brought to the Minister's attention, in which a longer time period would be warranted. The Minister indicated that she would be amenable to extending the time period following consultation with industry.

29. Even if only a small percentage of industry would be greatly assisted by a lengthier phase-in period, Committee members believe flexibility in this area is important for this small group of producers and at the same time would not jeopardise the objectives of the Bill.

Recommendation 3

30. The Committee recommends that the proposed 12 month phase-in period for the origin labelling amendments be extended to 18 months and furthermore, that flexibility be introduced so that where the costs associated with the changes are considered prohibitively expensive producers be allowed to seek exemption for a further 12 months.

(d) State and Regional References

31. The submissions of the Tasmanian Government and the Health Department of Western Australia are concerned that products will no longer be able to refer specifically to a State or region as their place of origin. The Tasmanian Government strongly supports the Buy Tasmanian Association Inc. which utilises a regional branding strategy similar to that of the Advance Australia Foundation, namely "Product of Tasmania". There are some 160 Tasmanian companies which pay a fee to use this logo. In its submission the Tasmanian Government stated that it is:

> "opposed to the use of names of Australian States and Territories being prohibited by the Bill. Rather, they should have equal status with and be substitutable for "Australian" in labelling for the domestic market."[6]

32. Given that the Bill will only affect products sold on the domestic market, the Committee considers that State or regional references are not ambiguous or misleading for Australian consumers. In fact, such references are referred to in Section 65VE (1) of the Bill as:

> "an express and unambiguous Australian origin representation."

33. The Committee believes that producers should be able to use a State or regional reference on the label if they believed this would give them a marketing advantage over other products.

34. In the Minister's submission to the inquiry there are proposed amendments to section 65VE (1) of the Bill which address the issue of labels referring to a particular area of Australia. By way of demonstration, the Minister showed the Committee a number of labels from Tasmanian products which comply with the requirements of the Bill. These examples illustrated that if a company currently uses a reference to a State or region in its label, all it need do is add either of the descriptors authorised by the Bill.

35. The Committee is satisfied that the provisions of the Bill would provide companies with the opportunity to promote their goods on a regional basis while still conforming to the requirements of the Bill. However, the wording of the amendments to the Bill detailed in the Minister's submission state that a descriptor "may be followed by words that identify a particular place in Australia or a particular part of Australia".[7] Furthermore, the Explanatory Memorandum to the Minister's amendments indicates that State or regional references "must follow" directly after the use of the descriptors allowable under the Bill.[8] It was clarified for the Committee that this wording is a legal drafting requirement and that it would be acceptable for State or regional references to precede the descriptor. Because of the wording of the Bill and the Explanatory Memorandum it will be necessary to inform industry exactly what form State and regional references may take.

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6 Submission no 4, p 3.

7 Submission no 8, attachment E.

8 Submission no 8, attachment F.

Recommendation 4

36. The Committee recommends that the Minister's statement in Parliament outline how the provisions of section 65VE (2) of the Bill will affect the use of State or regional references on product labels.

(e) Uniformity with other Legislative Requirements in Australia

37. The National Food Authority (NFA) has responsibility for food product regulation. Currently the NFA is considering origin labelling requirements in the *National Food Standards Code.* It is obviously essential that the origin labelling requirements of the NFA be consistent with those of the Bill. Lack of uniformity or inconsistencies between the two origin labelling requirements would only add to costs and to the confusion of food producers and consumers.

38. The Western Australian Health Department argued in its submission that:

> "Unless food is excluded from the TPA (Trade Practices Amendment) bill there will be conflict with some provisions of the NFA Code which will cause considerable confusion for industry, the consumer and the Environmental Health Officers who are responsible for enforcement."[9]

39. The Minister stated that the origin labelling requirements of the NFA will be consistent with those of the *Trade Practices Amendment Bill.* The Minister added that origin labelling requirements for food products in the *National Food Standards Code* may be more detailed than those in the *Trade Practices Amendment Bill.*

40. The Committee considers that it is crucial that there be uniformity in origin labelling requirements which may be established to avoid unnecessary cost and confusion amongst producers and potentially place them at risk of attracting legal sanction.

(f) International Obligations

41. The Grocery Manufacturers Association (GMA) and the Canadian High Commission suggested in their submissions that the provisions of the Bill are not consistent with Australia's international obligations under the GATT and the Codex Alimentarius. Members of the Committee were concerned that as a result of such breaches Australian exports may be disadvantaged due to retaliatory trade action being taken.

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9 Submission no 1, p 1.

42. The Minister reported to the Committee that in consultations with relevant agencies it had been indicated that the provisions of the Bill in no way breach Australia's international obligations because the Bill imposes no requirements on imported products. Witnesses from the Department of Foreign Affairs and Trade also stated that the provisions of the Bill in no way breach Australia's obligations as a signatory of the GATT.

43. The Canadian High Commissioner argued that the provisions of the Bill would be inconsistent with Codex Alimentarius standards.[10] The Codex Alimentarius Commission is an international body, which operates under the auspices of the World Health Organisation and the Food and Agriculture Organisation. It is "responsible for developing food standards for adoption as national standards by member governments."[11] The National Food Authority (NFA) has informed the Committee that:

> "Australia is a member of the Commission, and is therefore obligated to adopt Codex standards to the extent practicable. In practice, this means that the content of Codex standards is taken into account in the development of food standards in Australia, and Australian food standards are harmonised with Codex unless there are factors which have an over-riding influence."[12]

44. The Codex standard relating to the labelling of pre-packaged food states that: "when a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling."[13] The meaning of the term "changes its nature" does not appear to have been considered by courts in Australia but the NFA believes that it could be considered to be a less rigorous requirement than the kind of processing which would be required for a product to qualify for the "Made in Australia" label described in the Bill. As the NFA put it: "There is arguably a qualitative difference between the 'change of nature' required by the Codex General Standard and the 'essential character' test adopted by Australian courts and embodied in the Bill."[14] It is therefore possible that an Australian court could find that a product label, claiming Australia as the country of origin under the Codex definition, was misleading under section 53 of the *Trade Practices Act*.

45. It is also quite possible that some food product, such as frozen pork which might be imported into Australia and then processed to some extent, could be interpreted under the Codex standards as being of Australian origin without meeting the "essential character" test under section 65VE of the Bill. The final product could not then be labelled as "Made in Australia". To do so in fact could be misleading to

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10 Submission no 9, p 1.

11 National Food Authority - submission no 14, p 3.

12 ibid.

13 ibid.

14 ibid.

Australian consumers who would expect a product labelled as "Made in Australia" to have undergone fairly substantial processing.

46. Section 65VG of the Bill provides that products which have undergone some production step in Australia, but which have not been so substantially processed as to meet the "essential character" test, can carry a label which describes the processing step which occurred in Australia as long as the label also identifies that the ingredients are imported.

47. **The Committee considers that the essential purpose of labelling laws is to ensure that information which is conveyed to the public is accurate. Subject to the statements to be made by the Minister, referred to in previous recommendations in this report, the Committee considers that the provisions of the Bill provide for a labelling system which would ensure such accuracy. To amend section 65VE of the Bill to allow imported goods, which might undergo only a limited degree of processing in Australia, to qualify to be labelled as "Made in Australia" would not be in the public interest.**

Recommendation 5

48. The Committee recommends that the Minister make a response to the question of the interrelationship between the requirements of the Codex Alimentarius and the provisions of the Bill in her Second Reading speech.

Alan Griffiths MP
Chairman

APPENDIX I

LIST OF WITNESSES

Public Hearing Canberra, 30 May 1994

The Hon. Jeannette McHugh, MP Minister for Consumer Affairs
Mr Peter Primrose, Assistant Adviser, Office of Minister for Consumer Affairs
Mr Lyn Hansen, Acting Assistant Secretary, Federal Bureau of Consumer Affairs
Ms Anne Rawson, Legal Officer, Federal Bureau of Consumer Affairs

Department of Foreign Affairs and Trade
Mr Kevin W Wilkinson, Assistant Secretary, Multilateral Trade Organisations Branch, Trade Negotiations and Organisations Division
Mr Gerald J Lynch, Executive Officer, Manufactures and Minerals Section, Trade Negotiations and Organisations Division
Mr John L Stroop, Director, Trade Obligations Section, Multilateral Trade Organisations Branch

APPENDIX II

LIST OF SUBMISSIONS

Sub No	Date	Person or organisation
1.	16/05/94	Michael P. Jackson A/Director Environmental Health **Health Department WA**
2.	19/05/94	Jacque Pomerleau *Executive Director* **Canada Pork International**
3.	23/05/94	Mr W R Clark Corporate Affairs Director **The Smith's Snackfood Co.**
4.	23/05/94	The Hon. Mr R Groom Premier **Government of Tasmania**
5.	24/05/94	Mr C Moody Coordinator **'A' TEAM**
6.	24/05/94	Mr Ian Howard General Manager *Fine Papers Marketing* **Australian Paper Ltd**
7.	24/05/94	Mr Martin Ferguson President **ACTU**
8.	25/05/94	The Hon. Jeannette McHugh MP **Minister for Consumer Affairs**

8.1	30/05/94	Supplementary submission **Minister for Consumer Affairs**
9	25/05/94	His Excellency Mr L Michael Berry High Commissioner **Canadian High Commission**
10.	23/05/94	Mr Harris Boulton Executive Director **Grocery Manufacturers Australia Inc.**
10.1	27/05/94	Supplementary submission **Grocery Manufacturers Australia Inc.**
11.	26/05/94	Ms Juliet Seifert Executive Director **The Proprietary Medicines Association of Australia Inc.**
12	26/05/94	Mr John Braniff Chief Executive **Murray Valley Citrus Marketing Board**
13	30/05/94	Mr Garry Goucher Director of Policy **National Farmers Federation**

The following is a list of submissions to the Committee's inquiry into Government Purchasing Policies and the regulation of "Made in Australia" labelling, which addressed issues relevant to the *Trade Practices Amendment (Origin Labelling) Bill 1994.*

6	Mr Jim Fitzpatrick **Private Citizen**
9	Mr Norm Spencer **Advance Australia Foundation**
10	Mr Rob Hulls, MP
12	Mr T Webb **Food Policy Alliance**

14	
14 & 14.1	Mr J Cumming **Companies Association Ltd**
51	Mr Shane Coombe **Chamber of Manufactures NSW**
54 & 54.1	Mr H R Spier **Trade Practices Commission**
56	Ms Gae Pincus **National Food Authority**
57 & 89	Mr Harris Boulton **Grocery Manufacturers of Australia Limited**
58	Mr Tim Piper **Confectionery Manufacturers of Australasia**
60	Mr David Stephens **Department of Transport and Communications**
63	Mr C F Vassarotti **Australian Customs Service**
71	The Hon A Griffiths, MP **Department of Industry, Technology and Regional Development**
128	Mr Roger Bektash **EFFEM Foods Pty Ltd**
140	Ms Kerrie Milburn-Clark **AMCOR Paper**

APPENDIX III

MEMBERSHIP OF GOVERNMENT WORKING GROUP

Federal Bureau of Consumer Affairs (Chair)
Department of Administrative Services
Australian Quarantine and Inspection Service
National Food Authority
Department of the Arts, Sport, Environment and Territories
Australian Customs Service
Trade Practices Commission
Department of Tourism
Department of Industry, Technology and Commerce
Department of the Treasury
Department of Foreign Affairs and Trade.
Office of Regulation Review