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It Ain't Necessarily So: Country of Origin Labelling

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Executive Summary

Australia is neither the first, nor will it be the last, country to seek to promote the health of its domestic economy by means of country of origin labelling.

The *Trade Practices Amendment (Origin Labelling) Bill 1994* (which is yet to be debated) is an attempt to rationalise the use of descriptions on labels to identify the 'Australianness' of goods sold on the domestic market.

The Bill has brought to light a potential misconception by some consumers that 'Made in Australia' means that the ingredients are largely Australian in origin. This is not the case and has not been so under the existing *Trade Practices Act 1974*. The concern over what 'Made in Australia' means is most often raised in relation to foodstuffs. The use of regional indicators is also an issue.

In purporting to follow the lead given by the Courts, the drafters have claimed that they have identified suitable words for use on labels, as well as the need to be mindful of considerations such as reducing uncertainty by promoting continuity in the interpretation of country of origin rules. Although the decisions of the Federal Court of Australia on the meaning of 'Made in Australia' may not themselves necessarily support the use of the single set of words *acquired their essential character or qualities in Australia* to describe goods which may use the label descriptor 'Made in Australia', this is not the fault of those responsible for the Bill. Moreover, it is unarguable that the words used in the legislation at least represent one interpretation adopted by the Courts.

The paper also outlines these issues in the light of the Government's Working Group Report (May 1993), and the two separate Parliamentary Committee Reports (June and September 1994) on the proposed changes to trade practices law.
Background

Since the financial year 1986-87, the Australian Government has directly funded a campaign to encourage Australian consumers to buy more locally produced goods. The current financial year's allocation is $1.5 million.1

The economic rationale for such campaigns is questionable but they are electorally popular and may generate greater awareness of products and services sourced in Australia.

The rationality of consumption decisions based wholly or in part on country of origin is, however, not the topic of this paper nor the focus of the current public debate on product origin labelling. For the present, public concern is focussed on whether current and proposed labelling laws allow consumers to make fully informed decisions about product selection. A suggested motivation behind the Trade Practices Amendment (Origin Labelling) Bill 1994 ('the Bill') is the fear that 'the thing that you are able to read on the label, ain't necessarily so.'2

Without clear guidelines for identifying locally sourced goods and services, any campaign to encourage consumers to buy Australian will lack credibility in the eyes of producers and consumers and will constitute a waste of time and resources.

This Bill, to amend the Trade Practices Act 1974, was introduced into the House of Representatives on 23 March 1994, but it has not yet had its Second Reading. The purpose of the Bill is specifically directed at products which claim 'Australianness' when sold on the domestic market. The Bill does not impose descriptors on goods intended for export.

An important additional purpose of the Bill is to apply, via a proposed new section 65VG, a mandatory requirement on those products which carry labels such as 'Assembled in Australia', to also identify the source of ingredients or inputs (i.e. this can be the name of the overseas country, or simply 'imported').

The Trade Practices Act 1974 contains a provision [section 53 (eb)] which prohibits a false or misleading representation concerning the

1 Australia, Department of Administrative Services, Portfolio Budget Measures Statements 1994-95, Canberra, 1994: 51.

2 With apologies to the Gershwin classic song It Ain't Necessarily So. Recognition is also given to the title of the song which was written by George Gerswhin, DuBose and Dorothy Heyward, and Ira Gerswhin and is published by Warner Chappel Music Limited.
place of origin in connexion with the supply of goods or services. The Federal Court of Australia has considered the meaning of this section in only a handful of cases. As a generalisation, those decisions indicate that the description 'Made in Australia', when used on a label, can mean that the ingredients may have been imported but that the product has been subjected to substantial processing in Australia. There is a contrary view held by some consumers that 'Made in Australia', particularly when applied to foodstuffs, means that the ingredients are largely Australian in origin.

The Explanatory Memorandum to the Bill says that the words 'the goods acquired their essential character or qualities in Australia' in relation to the descriptor 'Made in Australia' are based on those decisions of the Federal Court of Australia in cases involving section 53(eb) of the Trade Practices Act 1974. One conclusion of this paper is that those decisions may be open to another interpretation.

The Bill has generated some controversy. As part of the parliamentary process, the opportunity has been taken to refer the Bill to two separate Parliamentary Committees. The Committees' reports were presented within a space of four months of each other. These reports follow the recommendations of a Working Group of Federal Government Departments and Agencies on the vexed issue of country of origin labelling. Both the Working Group report and the Senate report by the Standing Committee on Legal and Constitutional Affairs reveal significant divisions of opinion on product labelling.

The Bill has focussed attention on two main issues:

- the meaning of 'Made in Australia'; and
- whether it is necessary to apply 'Made in Australia' to goods sold on the domestic market and which already carry a regional descriptor such as 'Product of Tasmania'.

The obvious problem in determining 'Australianness' of the product is where to draw the line. Setting a percentage content level has been suggested but rejected because of the complexities in determining a

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uniform measure for labour and materials, and an agreed percentage figure (e.g. 51%, 85% or 95%).

Although a timely attempt to rationalise an area of the law which has potentially conflicting requirements for labels (i.e. when one considers Commonwealth, State and Territory and international requirements for labels), the Bill is open to criticism of being an overly centralist in approach in its treatment of regional indicators.

**Overseas experience, rules of origin, and making the rules**

**Overseas experience**

Australia is neither the first, nor will it be the last, country to seek to promote the health of its domestic economy by means of country of origin labelling.

Rules of origin, however, are very complex and it is important to differentiate, as far as possible, between the rules which apply at the international level and those which may be introduced at the domestic level. These issues can be further complicated when there is added to the equation a proposal that not only should the label on a product identify the country of origin but that the label should also identify a region within that country. These considerations are sometimes taken one step further by those who also promote preference for local manufacturers over foreign-owned manufacturers operating within the domestic market.

As can be seen from the following list, a variety of countries have taken differing approaches to country of origin labelling:

- **Germany:** No mandatory descriptors on labels; if 'Made in Germany' is used it must not be misleading; the product must have '...those characteristics or components of the product which constitute its value in the eyes of the public [that] are the result of German work'.

- **Japan:** No mandatory descriptors on labels; if a label is applied it must be accurate; the Government guidelines say that the country of origin is where a substantial change of the goods takes place.
• Canada:
  To claim Canadian origin the product must satisfy two tests; firstly, the last substantial transformation was performed in Canada resulting in a new and identifiable product and secondly, an assessment is made as to the amount of direct Canadian labour and materials as inputs (if the amount for labour and materials is at least 51%, the product will most likely satisfy the second test); these tests also apply to processed food.

• United Kingdom:
  No mandatory descriptors on labels.

• Singapore:
  Country of origin labelling only applies to food and then all that is required is the name and address of the local importer or agent and the country of origin of the food; no particular wording is required.

• United States of America:
  All foreign imports into the United States must bear the name of the country of origin unless exempted by law (as per the Tariff Act 1930); for imported ingredients used in US processing, the rule of origin applied is known as 'substantial transformation'; this standard is derived from US court decisions; one of the most notable is the brushes case, United States v. Gibson-Thomsen Co., 27 C.C.P.A. 267 (1940), where handles imported from Japan and clearly labelled were further processed into brushes obliterating the country of origin label on the handle; the Court held that the product was not misleading as to country of origin when sold as the law does not apply to '...imported materials used in the manufacture in the United States of a new article having a new name, character and use.'

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New Zealand: mandatory descriptors for clothing and footwear, regardless of origin.6

Competing criteria

Such divergent approaches reflect not only a range of economic and political concerns but also the competing goals of labelling policy which include:

- at the international level, to assist governments in determining the provenance of goods entering and leaving their territory;
- to enable a country to analyse sources of demand and supply;
- to gather statistics;
- to impose tariffs and quotas (including preferential or most favoured nation tariffs);
- to comply with international food standards;
- at the domestic level, to differentiate between products so that a country is able to support its own industries (e.g. Buy American Act for government procurement contracts);7 and
- to ensure that the provenance of goods is not misrepresented on labels.

For difficulty of determining county of origin guidelines is also reflected in the failure of international codes to gain universal acceptance amongst trading nations.

These difficulties come home with considerable force in relation to the labelling of food.

The international food standard is the Codex Alimentarius (Latin for 'food code'). The Codex Alimentarius ('Codex') provides the

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6 Unless otherwise specified, the information on overseas countries was collated from Australia, Report of the Working Group on Country of Origin Labelling of Consumer Products, Canberra, May 1993: 10-11 and from the Department of Foreign Affairs and Trade, Canberra.

international set of rules and guidelines aimed at protecting public health, ensuring fair trade in food and promoting harmonisation.\footnote{The Food Standard - Issue 10, National Food Authority, Canberra, May 1994: 5.} Codex has developed standards for labelling to control untrue statements made on labels, and to regulate nutrition and health claims. The Codex also establishes codes of practice on food hygiene\footnote{Ibid.} and is administered by the Codex Alimentarius Commission, an international body, which operates under the auspices of the World Health Organisation and the Food and Agricultural Organisation. Codex standard on the labelling of food provides:

\begin{quote}
...when 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.\footnote{Australia, Report by the House of Representatives Standing Committee on Industry Science and Technology, The Trade Practices Amendment (Origin Labelling) Bill 1994, Canberra, June 1994: 9.}
\end{quote}

The House of Representatives Standing Committee on Industry, Science and Technology in its consideration of the Trade Practices Amendment (Origin Labelling) Bill 1994, suggests that it is quite possible that some imported food products (such as frozen pork) which are then processed in Australia, would be regarded as satisfying Codex as being of Australian origin.\footnote{Ibid.} Under section proposed 65VE of the Trade Practices Amendment (Origin Labelling) Bill 1994, however, it is unlikely that the product would satisfy the 'Made in Australia' test.

Divergent results from the application of the international standard and the proposed domestic trade practices labelling requirement turns on the wording used in each to determine country of origin. Codex uses the words 'changes its nature' to describe the product which reaches the consumer, while the proposed trade practices approach is to use the words 'the goods acquired their essential character or qualities in Australia'. (This issue is discussed in more detail, below.)

In the past, the development of rules of origin at the international level were largely uncoordinated with some countries relying on the rules as a means of restricting or discriminating against imports.

GATT (the General Agreement on Tariffs and Trade) in 1947 was directed at reducing such artificial barriers to free trade. More recently, the Uruguay Round of GATT negotiations clarified a number
of country of origin issues by addressing the long-standing concerns of countries such as France which have been strongly critical of the misleading use of 'geographical indications' (e.g. Beaujolais and Champagne) on product labels.

Advances in technology, transportation and the growth of international trade have also seen a considerable blurring of the concept of country of origin. Manufacturers can now more readily operate across international boundaries and they can source components and materials from several countries. A simple example is the Honda motor vehicle for the United States car market. The design is Japanese, some components are Japanese but the engines are manufactured in Ohio in the United States. The engines are then shipped to Canada where they are incorporated in the finished vehicle which is then returned to the United States for sale. What is the origin of that car? One answer to that question is found in a series of rulings by the United States Customs Service which turn on an assessment of value added in each step in the manufacture. The end result was to see a progressive reduction of the United States content claimed by Honda to a percentage below 50 percent and thus below a level for duty preference when the cars re-entered the United States.12

Trade Practices Amendment (Origin Labelling) Bill 1994: Made in Australia

The Bill

Faced with the above dilemmas, those responsible for the present Bill sought to maintain something of a middle course, designed to bolster the integrity of the present scheme without disadvantaging businesses with a genuine and established stake in the local production, manufacture or distribution.

The main purpose of the Trade Practices Amendment (Origin Labelling) Bill 1994 is to insert a new division into the Trade Practices Act 1974 to deal with representations which are made about goods which are claimed to be Australian in origin (i.e. either the 'Product of Australia', 'Produce of Australia' or 'Made in Australia').

Under a proposed new section 65VE, a corporation which supplies goods to the Australian domestic market and claims Australian origin on the label must comply with the following mandatory descriptors for the label:

<table>
<thead>
<tr>
<th>Label Descriptor</th>
<th>Meaning of the Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Produce of Australia</td>
<td>Australia was the place of origin of each major ingredient or component or of the goods and all operations involved in the manufacture or production of the goods happened in Australia.</td>
</tr>
<tr>
<td>Product of Australia</td>
<td>The goods acquired their essential character or qualities in Australia.</td>
</tr>
</tbody>
</table>

(The mandatory descriptor may be followed by words which identify a particular place in Australia).

The term 'Made in Australia' is proving to be the most contentious issue as a descriptor for labels on products claiming 'Australianness'. A selection of the judicial statements in trade practices legal actions is as follows:

The words 'Made in Australia, in application to a tool such as a metal spanner, in my opinion mean in the ordinary parlance that most of the processes by which a piece of metal is brought into the shape of the tool as sold occurred in this country.

(Jenkinson J. in Siddons Pty Ltd v. The Stanley Works Pty. Ltd. (1990) ATPR 41-044 at p. 51,596; a spanner imported from Taiwan and modified and finished in Australia was not 'Made in Australia').

To say of a roll of masking tape exhibited or offered for sale that it was made in Australia is to say of it, at least, that the operations by means of which one side of the paper was endowed with its adhesiveness and the other side was made inadhesive was carried out in this country.

(Jenkinson J. in Korczynski v. Wes Lofts (Australia) Pty. Ltd. (1986) 10 FCR 348 at p. 355; adhesive tape manufactured overseas and imported in large rolls was unrolled, cut and re-rolled in Australia; the Court held that it could not be said that the goods were 'Made in Australia').

...'Made in Australia' is an historical statement. The expression suggests at least substantial manufacture in Australia. In my
opinion the fact that the casings were cut and sewn in Korea prevents the statement from being one which can be correctly applied to the articles in question here.

(Sheppard J. in Thorp v. CA Imports Pty. Ltd. (1990) ATPR 40-996 at p. 50,967; although the toy was designed in Australia, the fabric for toy koalas was stitched in Korea then imported into Australia where the item was brushed, filled and finished).

To say of goods that they were made in Australia plainly is to make a statement concerning their place of origin. The making of goods involves the steps and procedures which preceded and resulted in the formation or composition of the goods.

(Gummow J. in Netcomm (Australia) Pty Ltd v. Dataplex Pty. Ltd. (1988) 81 ALR 101 at p. 107; the circuit boards for computer modems were made overseas and imported into Australia for assembly as modems; the Court held that although these products should not be labelled 'Made in Australia', the terms 'Australian Built' or 'Built in Australia' were not misleading).

The Explanatory Memorandum to the Trade Practices Amendment (Origin Labelling) Bill 1994 states that the proposed test for labelling goods 'Made in Australia' is that the goods acquired their essential character or qualities in Australia (emphasis added). The Explanatory Memorandum also says that this test is based on decisions of the Federal Court of Australia in cases brought under paragraph 53(eb) of the Trade Practices Act 1974. Paragraph 53(eb) of the Trade Practices Act 1974 provides:

53. A corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services, or in connexion with the promotion by any means of the supply or use of goods or service -

... 

(eb) make false or misleading representation concerning the place of origins of goods;

It is accepted that the Explanatory Memorandum is representing that the actual words the goods acquired their essential character or qualities in Australia used in the Bill in proposed section 65VE for the mandatory descriptor 'Made in Australia' are an interpretation of the decisions of the Federal Court of Australia in relevant litigation arising under the Trade Practices Act 1974. As noted above, those decisions did not actually use the exact words stated in the Bill. In fact, in the

\[13\] Australia, Explanatory Memorandum to the Trade Practices Amendment (Origin Labelling) Bill 1974: paragraph 17.
Thorp case, Justice Sheppard said that he had regard to the decisions in Korcznski and Netcomm and stated:

Whilst I have found those decisions helpful, I think they must be looked at in the context of their own facts. The same course has to be followed here.\(^\text{14}\)

This point illustrates how difficult it is to select a set of words for a descriptor which will satisfy everyone as well as convey to the consumer sufficient information as to the provenance of the item. What is clear, however, is that the Federal Court, even under the current law, does not require a product to be completely Australian in all respects before it can carry the label 'Made in Australia'.

The Courts, however, are not the only source of 'received learning' on the proposals such as those contained in the Bill. Prior to and following the tabling of the legislation there has been considerable public agonising on the most appropriate gundnorm for the 'Buy Australian' campaign.

Recent Reports on Country of Origin Labelling

In May 1993, the Report of the Working Groups On Country of Origin Labelling of Consumer Products was issued in response to consumer and supplier concerns about the effectiveness of labelling laws in Australia. The Working Group (comprising Federal Departments and Agencies)\(^\text{15}\) was divided in its Report over four options it had identified. These ranged from maintaining the status quo, voluntary codes of practices, the introduction of consumer product information and descriptors for specific classes of goods under the Trade Practices Act 1974, and the approach outlined in the Trade Practices Amendment (Origin Labelling) Bill 1994.

One important benefit of the Working Group's study was the identification of the wide range of Commonwealth, State and Territory laws which apply, sometimes in a potentially conflicting way, to labelling in Australia. The types of laws include, trade practices, fair trading, health, poisons, food, trade standards and product symbols (i.e. regional designators) legislation. Clearly, some rationalisation and uniformity is desirable.

In June 1994, the House of Representatives Standing Committee on Industry Science and Technology issued its report The Trade Practices Amendment (Origin Labelling) Bill 1994. It is a very brief report which provides basic support for the Bill subject to recommendations


\(^{15}\) Input was also sought from State and Territory Governments.
for additional information and clarification of definitions used in the Bill to assist industry and consumers, as well as a phase-in period. The Committee concluded that the approach taken in the Bill was probably the best in practical terms.

On 1 September 1994, the Senate Standing Committee on Legal and Constitutional Affairs issued its report *Trade Practices Amendment (Origin Labelling) Bill 1994*. The Report is a more detailed study than that of the House of Representatives Committee Report and it contains two separate dissents. Without unduly simplifying the contents of the Senate report, it is probably fair to say that the major point of contention is the descriptor 'Made in Australia'. In addition, one dissent argues for the option of retaining regional identification (e.g. 'Product of Tasmania') as a sole descriptor on the label. The majority of the Committee supported the Bill on the basis that there is a need for further legislative intervention in the area of origin labelling.

All three reports concede that there is no system which will satisfy all parties who have an interest in the matter of country of origin labelling.

The Report by the Senate Standing Committee on Legal and Constitutional Affairs noted that the Federal Court's view of 'Made in Australia' is not shared by all. In its report the Committee stated:

Submissions from, among others, the NSW Government, the Australian Council of Trade Unions, the Grains Council of Australia, the Victorian Farmers' Federation, the Australian Canning Fruitgrowers Association and the Food Policy Alliance stated that Made in Australia and Product of Australia were perceived by consumers to be synonymous and should be so treated in the Bill.16

In a dissent to the report of the Senate Standing Committee on Legal and Constitutional Affairs, the following further distinction was made:

The evidence presented to the Committee strongly supported the contention that, at least so far as food products are concerned, 'Made in Australia' is perceived as meaning a product made in this country from wholly Australian produce. The Bill, however, would allow this label to be placed on products processes (sic) from imported foodstuffs. (emphasis added)17
In another dissenting report, the Australian Democrats argued that 'Made in Australia' means manufactured in Australia largely from Australian components or ingredients, and that the term should be grouped with 'Product of Australia' and 'Produce of Australia', with 'Manufactured in Australia' or 'Processed in Australia' used when there is no implication that the inputs were made or grown in Australia. The Australian Democrats have foreshadowed amendments to the Bill to achieve this 're-classification'.

Other Key Issues: The Australian Made Logo, Australian Owned Companies, and Regional Indicators

Australian Made Logo

The Trade Practices Amendment (Origin Labelling) Bill 1994 exempts the Australian Made Certificate Mark (the green and gold triangular logo containing a representation of a kangaroo). The Commonwealth owns the logo and allows it to be used on goods which satisfy certain criteria. The Australian made campaign encourages consumers to buy locally made products where quality and price are comparable. The Commonwealth has licensed the Advance Australia Foundation to license, in turn, the use of the logo. Under the Bill, the logo must, however, be accompanied by the appropriate mandatory descriptor (i.e. 'Product of Australia' or 'Made in Australia').

This two tier system of classification is, however, potentially confusing as the 'Australian Made' logo will be applied to both categories i.e. 'Product of Australia' and 'Made in Australia'. When used in addition to the proposed mandatory descriptor 'Made in Australia', the appearance of the logo essentially means that the inputs are sourced largely in Australia (but the logo may also be used on imported contents if local inputs are not available). 'Australian Made' and 'Made in Australia' are rather similar, yet it is possible under the proposed legislation that the logo 'Australian Made' could appear on labels with different mandatory descriptors. Consumers will have to accept that 'Product of Australia' and 'Made in Australia' mean different things but that both can have 'Australian Made' on the label, as well. The

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19 Proposed section 65VF
Explanatory Memorandum specifically notes that the criteria set by the Commonwealth for the logo may have to be amended.\(^{20}\)

**Australian-owned?**

The Australian Owned Companies Association produces the AusBuy guides and the Association has campaigned heavily for changes to the labelling laws. While the Association favours the proposed new mandatory descriptors it also makes the point that the opportunity should also be taken to indicate on the label the ownership of the companies producing the products. The Association has survey data which shows that '...97% of Sydney adults would choose a product from Australian owned companies and not foreign owned ones when the quality and price are the same.'\(^{21}\) The Bill does not utilise descriptors which would indicate when a product is produced by an Australian owned company. The Association's point is clear enough but it fails to recognise that a foreign owned company operating in Australia will provide opportunities for local employment and the use of Australian inputs, as well as providing foreign investors with a return on their capital.

**Regional concerns and local identifiers**

Some States in Australia have fostered consumer awareness of their products by endorsing regional indicators (e.g. 'Product of Tasmania', or 'Product of the Margaret River' in Western Australia). The Bill will still allow regional indicators but the labels will also require the application of mandatory descriptor i.e. 'Product of Australia', as well. The Senate Standing Committee on Legal and Constitutional Affairs had some sympathy for the view that producers should continue to have access to regional label descriptors which have been established over time but the majority of the Committee said that the fact that the proposed law requires the addition of the mandatory descriptor 'Product of Australia' will not unduly inhibit regional marketing strategies.\(^{22}\) It would appear that the real concern is possible

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confusion in cases where regional or town indicators are used e.g. 'Product of Texas' - a small town in Queensland.

Such concerns should not, however, be overblown. Although other than State-based indicators (such as town or regional descriptors) may be employed from time to time, the argument that 'Product of Australia' is necessary so that consumers in Australia are not misled will not always be very persuasive. For example, it is difficult to see how local buyers are likely to be misled by a description such as 'Product of Tasmania'. If the proposed law only applies to the domestic market, it seems unnecessary to qualify the use of the sole descriptor 'Product of Tasmania' as it is hoped that most Australians realise that a label which states 'Product of Tasmania' means that the item is also a 'Product of Australia' without the latter descriptor appearing on the label.

On balance it is possible that the Bill's approach in requiring 'Product of Australia' to appear on a label which already has a regional indicator is too inflexible.

Where to Draw the Line?

In evaluating the approach taken by the Bill, there is no escaping the practical difficulties of applying universal standards to a variety of products and industries. Take, for instance, the fishing and processed food industries.

Fishing

In some (perhaps rare) instances it may even not be altogether clear whether or not a good is produced locally or offshore. The fishing industry presents one such example but other cases are not difficult to envisage.²³

Only Australian vessels and those non-Australian vessels specifically authorised under the Fisheries Act 1952 and the Fisheries Management Act 1991 may land fish in Australia. The Trade Practices Amendment (Origin Labelling) Bill 1994, provides:

For the purposes of this Division, Australia is to be regarded as the place of origin of all marine produce that was first landed in Australia, regardless of where it was caught or taken (proposed section 65VB).

²³ For example, goods produced offshore by Australian-owned companies using predominantly Australian expertise and labour - overseas mining operations and joint ventures.
The Explanatory Memorandum states that the reason for the amendment is to overcome the effect of the Acts Interpretation Act 1901 which, unless the contrary is stated in relevant legislation, confines Australia's coastal sea to the 12 mile limit. Australia's fishing zone extends to the 200 mile limit.

The National Fishing Industry Council, however, proposed that Australia be regarded as the place of origin of marine produce landed in Australia only by an Australian-registered and licensed fishing or processing vessel. The Council supported, by way of a special allowance, access for those limited number of non-Australian tuna vessels which utilise Australian canneries (at Eden and Port Lincoln) during the off-season.\(^24\) The industry concern is that Australia's international reputation for premium quality seafoods may be threatened by landing marine produce which may not have been handled and stored to standards expected in Australia, or which had been taken from a polluted marine environment.\(^25\)

(The Senate Standing Committee on Legal and Constitutional Affairs noted the fishing industry's concerns but the Committee considered that the concerns were '...more abstract than real'.\(^26\))

Percentage value added

Short of only applying 'Product of Australia' to goods entirely sourced and produced locally, the issue of local content or value-added is inevitably one of degree.

In evidence to the Senate Standing Committee Inquiry, some Australian industry associations argued for a percentage content as part of the descriptor (e.g. the Queensland Fruit and Vegetable Growers suggested that a 95% Australian cost and content rule be added to the descriptor 'Produce of Australia' or 'Product of Australia'). Other industries argued for a marginally lower content (e.g. the


\(^{25}\) Ibid.

A problem with a percentage content rule is that many good Australian products may have difficulty with a strict application of the rule. For example, Australia does not produce cocoa and some chocolate chip biscuits can have up to 17% of chocolate in the product. In another sector, Australia does not produce raw rubber. Seasonal influences can also mean that Australian products rely upon imports for a small period of time to ensure that the level of production does not fall away for part of the year. This is a particularly difficult issue and it most readily brings into focus the expectation of some consumers who want a very high level of Australian content (particularly for food), and the practical problems faced by industry in maintaining a steady level of production. In addition, it is also argued that it would be difficult to identify value added costs across the broad range of items produced in this country. It is accepted the approach taken in the Bill to use wording as a descriptor without the addition of a percentage content rule is a reasonable compromise.

**Conclusion**

The *Trade Practices Amendment (Origin Labelling) Bill 1994* is a reasonable and timely attempt to address complex and seemingly intractable problems in a difficult and contentious area of law.

The obstacles encountered by the proponents of the current Bill reflect a divergence of views and community expectations as predictable as they are 'prickly'.

Broad questions over the worth of schemes designed to promote import replacement are probably of somewhat more importance than the issues considered here and go the question of whether such legislation should ever attract the amount of attention that the present Bill has received to date.

At the micro level, however, there may be scope for improving the Bill by reducing the level of regulation often associated with such schemes.

In purporting to follow the lead given by the Courts, the drafters have claimed that they have identified suitable words for use on labels, as well as the need to be mindful of considerations such as reducing

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27 Refer to the Report at footnote 26: 17.

uncertainty by promoting continuity in the interpretation of country of origin rules. However, the decisions of the Federal Court of Australia on the meaning of 'Made in Australia' may not themselves necessarily support the use of the single set of words acquired their essential character or qualities in Australia to describe goods which may use the label descriptor 'Made in Australia'. It must be conceded that this is hardly the fault of those responsible for the Bill and that the words used in the legislation at least represent one interpretation adopted by the Courts.

It is suggested that the case for qualifying the use of regional indicators (e.g. 'Product of Tasmania') under a law which is designed to apply only to the domestic market has not been satisfactorily made out by supporters of the Bill. Most consumers would understand that 'Product of Tasmania' on a label is sufficient to identify that the item is Australian. It should not need a mandatory descriptor 'Product of Australia' to be placed on the label as well, simply to promote uniformity. Having said that, recognition must also be given to those rare examples of regional or town indicators in this country which might be misleading e.g. 'Product of Texas' or even 'Product of Victoria' now that Victoria in Canada has been the venue for the recent Commonwealth Games. On balance, however, the Bill's approach to regional indicators should be reconsidered.