
Policy developments

The following media release was issued by the Minister for Customs and Consumer Affairs, the Hon. Warren Truss, MP, on 19 November 1997. It discusses proposed changes to the Trade Practices Act in relation to country of origin labelling of goods. The media release is reproduced in full.

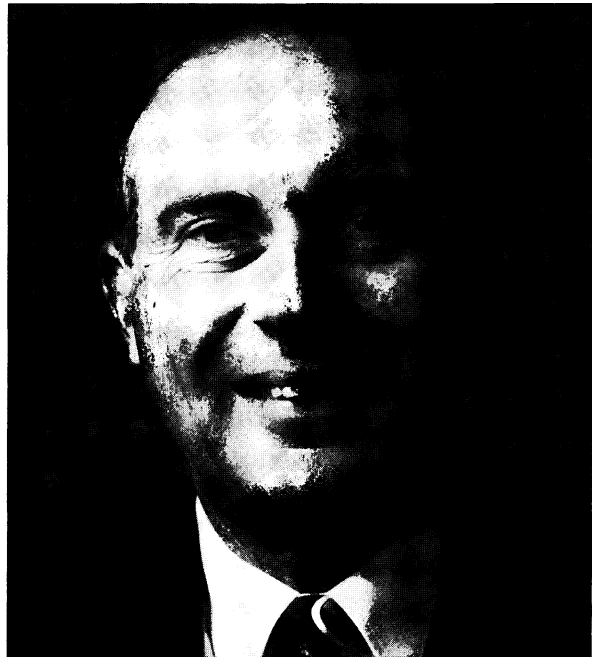
Government acts to address uncertainty in origin labelling

The Government today announced that it would move to address industry and consumer uncertainty over origin labelling claims.

Minister for Customs and Consumer Affairs, Warren Truss, said many Australians desired a simple effective labelling regime that identified those products that come from companies that invest in Australia and provide jobs for Australians.

'This has been provided by the well-known green and gold Australia Made logo, or by simple statements such as "Made in Australia",' Mr Truss said. 'The Government is acting to define the way companies can continue to use these simple claims which consumers recognise and will be able to respond to with confidence.'

Recent court decisions have created considerable confusion in the minds of industry and consumers alike, undermining both the value of origin claims in the marketplace and leaving firms unnecessarily exposed to prosecution.



Photography courtesy of AUSPIC

'The Government is acting to address this uncertainty, and to set rules that industry can follow and consumers can understand,' Minister Truss said.

The Government proposes to amend the *Trade Practices Act 1974* to create a certain and comprehensible regime for origin claims. Suppliers will only be able to claim that a product was made in Australia if it was substantially transformed in Australia and at least 50 per cent of the cost of production was incurred in Australia.

There will be no change to the existing arrangements for descriptions such as Product of Australia which will continue to be reserved for products which are 100 per cent Australian or near to it.

The Government also announced that it will ask the Australia New Zealand Food Authority (ANZFA) to consider the adequacy of the general regime for labelling for the food sector.

‘Consumers expect detailed country of origin labelling on food products, and the Government will ask ANZFA to ensure that consumers receive the information that they desire. ANZFA has proposed a draft standard for country of origin labelling for food products and the Government wants the matter concluded promptly.’

‘The Government is committed to ensuring that the domestic origin labelling scheme reflects consumer needs, while allowing Australian companies to promote their contribution to the local economy,’ the Minister said.

To ensure this, the proposed legislation will include a regulation making power that will provide the Government with the ability to exclude certain processes from the definition of ‘substantial transformation’, thereby ensuring that only those goods that are really made in Australia can carry that claim.

‘This regulation making power will enable the Government to address certain “hot spot” issues, where loopholes in the proposed general regime might allow products to claim to be Made in Australia when the majority of consumers do not believe that to be the case,’ Minister Truss said.

Examples of this could be orange juice made from imported concentrate, peanut butter blended from imported peanuts or ham made from imported pork.

The regulation power will also enable the registration of industry logos which set country of origin labelling standards higher than the minimum allowed.

‘At the end of the day, origin labelling can only be as effective as industry and consumers allow it to be. Today’s announcement sets a framework upon which an effective labelling regime can be built.’

Background information

What is an ‘origin’ claim?

A country of origin claim is a representation that a good was made in a particular country, such as ‘made in Australia’. For domestic producers, the use of a country of origin claim

on a product can provide a marketing advantage over other similar products.

Country of origin claims include pictorial representations of origin, such as the use of a map of Australia or the Australian flag on a product. Origin labels can cover any representation, whether it be on a product, packaging or related advertising, which implies that a good has some association with a particular country (i.e. the use of the Eiffel tower on French goods is an implied origin claim).

The need for amending the law

Origin claims are chiefly regulated through the Commonwealth *Trade Practices Act 1974* (TPA) and mirroring provisions in State and Territory Fair Trading Acts. Section 53(eb) of the Act states that:

A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services make a false or misleading representation concerning the place of origin of goods.

In addition, origin claims need to comply with the general requirement of not being misleading and deceptive imposed by s. 52 of the TPA. Similar requirements exist within State and Territory Fair Trading Acts.

Because the relevant legislation is general in nature, origin claims have been subject to varied and ongoing judicial interpretation. While this has enabled the courts to consider the specific circumstances of a matter in determining whether an origin claim is accurate or not, this has come at the cost of certainty for industry and consumers alike. The lack of clear criteria for ‘made in Australia’ claims has meant that consumers are uncertain as to what origin claims mean, and companies are unable to be confident that they are complying with the requirements of the law.

The Government believes that this uncertainty is undermining the integrity of the origin labelling regime, and that it is a disincentive to providing origin information on goods, thereby denying consumers important purchasing information.

In determining how the law should be amended, the Government gave consideration to a range of factors, including the needs of consumers, the nature of Australian industry and Australia's commitment to free trade. The Australian economy, particularly in the manufacturing sector, is increasingly reliant on imported components, as it becomes more fully integrated into the global economy. Competitive pressures demand that the economies of scale are pursued, with key components imported from large plants developed to service a global market. Goods which the majority of Australian consumers would readily class as 'made in Australia', including cars, air-conditioners and others, often have some key component which comes from overseas.

Australian consumers wish to identify those goods which come from factories that employ Australian workers and contribute to the domestic economy. The Government is committed to providing a labelling regime that allows consumers to make these important purchasing decisions, while recognising the impact of globalisation on Australia's manufacturing base.

Proposed amendments to the Trade Practices Act 1974

The Government proposes to amend the TPA to establish a minimum 'safety net' for origin labelling claims for goods made in Australia. Goods will only be able to carry the unqualified origin labelling claim 'made in Australia' where:

- the goods have been substantially transformed in Australia; and
- at least 50 per cent of the cost of production is incurred in Australia.

Under this proposed test, consumers can be confident that the majority of the value of a good carrying the label 'made in Australia' is undertaken in this country.

What is 'substantial transformation'?

A substantial transformation involves a production operation that results in a new, significantly different, separately identifiable

product. An example of a substantial transformation is the assembly of a motor vehicle in Australia. The components are assembled into a new product and, therefore, a substantial transformation has taken place. To determine whether the car is 'Made in Australia' we also need to consider whether at least 50 per cent of the production costs have been incurred in Australia. If this is the case then the car can be marketed as 'Made in Australia'. As a counter example, a process that does not meet the substantial transformation test is the addition of stuffing to soft toys that have been pre-manufactured overseas but finished in Australia.

'Hot spot' issues

The Government is aware that, given the vast multitude of products available in the marketplace, there will be occasions when uncertainty in respect to the proposed legislation will arise. To address this, the draft legislation will include a regulation making power to assist in defining 'substantial transformation'.

This regulation making power will enable the Government to prevent produce claiming that some simple process applied to a foreign good (e.g. blending peanuts or making ham from imported pig meat) satisfies the substantial transformation test. Such processes will not be enough to allow a good to be presented as 'made in Australia'.

Use of the regulation making power will be subject to prior consultation with both consumer groups and industry representatives and accord fully with Australia's strong international commitments to free trade.

'Product of/produce of' labels

The proposed legislation will not impact on the use of the 'product of/produce of' labels. These labels are particularly important for the primary produce sector, where very high levels of domestic content are an important element in marketing and promotion. The existing judicial interpretation of 'produce of/product of' will not be affected by the Government's proposed legislation, retaining the use of this

important descriptor for goods of very high local content.

The 'cost of production' test

The Government intends to develop, in consultation with industry groups and consumer organisations, a tightly worded 'cost of production' test, which will only factor in those costs of production that are normally associated with the production of a good. Factors such as distribution, advertising and market development will be excluded from the 'cost of production' test.

Origin labelling of food

Consumers place a particular value on the origin labelling of food products. The origin of food products is regarded by many consumers as an important factor in determining the level of possible contaminants in foodstuffs.

Reflecting this, the Government will ask the Australia New Zealand Food Authority (ANZFA) to consider whether the proposed amendments to the TPA offer sufficient certainty for consumers in respect to the labelling of food. The Government believes that ANZFA, a joint Commonwealth/State/New Zealand body, is the appropriate organisation to determine any extra labelling requirements for food. In determining whether or not additional requirements are necessary, ANZFA should have regard to the needs of consumers, compliance costs for industry and Australia's international obligations and commitment to free trade.

The 'Australian made' logo

The proposed legislation will also establish a sound basis for the ongoing management of the well-known green and gold kangaroo 'Australian Made' logo. The Australian Chamber of Commerce and Industry have been consulting with key industry bodies, at the request of the Commonwealth, to develop new administrative arrangements for the logo, following the winding-up of the former licensing agent in 1996.

One of the key impediments to finalising a new code of practice for the logo has been the status of the underpinning law. The proposed legislation provides a stable and workable basis for industry to finalise the code of practice, which would protect the integrity of the logo and reduce compliance costs associated with its use.

Other origin labelling schemes

The proposed legislation will establish a 'safety net' for origin labelling claims in the Australian market. Consumers may, however, demand more detailed information from some industry sectors, or desire a system to identify goods with levels of local content well above this 'safety net'. The Government will encourage the marketplace to develop such schemes, the success of which will depend on the commitment of industry and consumers. A number of such schemes either already exist or are in an advanced stage of development. The regulation power will also enable the registration of industry logos which set country of origin labelling standards higher than the minimum allowed.