

International dimensions: trade obligations and food imports

- 5.1 A recurring theme in the debate about reform of country of origin food labelling in Australia has been the international dimension: how does Australia observe its international trade obligations whilst also ensuring that consumers are provided with the country of origin information which repeated surveys have shown is highly desired?
- 5.2 This international dimension was incorporated in the relevant terms of reference:
- the impact on Australia's international trade obligations of any proposed changes to Australia's country of origin labelling laws; and
 - whether Australia's country of origin labelling laws are being circumvented by staging imports through third countries.
- 5.3 This chapter will examine these issues. The chapter will begin with a brief overview of Australia's trade obligations. The chapter will then examine the recurring misconception that food imports from New Zealand do not require a country of origin statement, before discussing whether there is evidence of the staging of imports in third countries in an attempt to circumvent Australian laws.

Trade obligations relevant to country of origin food labelling

- 5.4 Australia is party to a range of binding international trade agreements that relate to country of origin food labelling. Generally, these agreements ensure that Australia's domestic regulation cannot create a barrier to trade or distort trade in favour of its domestic markets. As a party to these agreements, Australia must ensure that its domestic regulations are

compliant with a range of obligations which work to that general objective. The main agreements that relate to country of origin labelling are discussed below.

General Agreement on Tariffs and Trade

5.5 The *General Agreement on Tariffs and Trade 1994*, (GATT) is the seminal agreement on the international trade in goods, and serves as an umbrella treaty for international trade under the World Trade Organisation (WTO).

5.6 The GATT establishes two fundamental trade law principles. Under these principles, and as a party to the GATT, Australia must not create unnecessary obstacles to trade, or give domestically produced goods an unfair advantage over imports (known as the national treatment principle) or, give imports of one country an unfair advantage over imports of another country (the most favoured nation principle).

5.7 Accordingly, parties to the GATT must ensure that imported goods are treated no less favourably than domestic goods and that any advantage accorded to goods originating in another country is extended to like products of all WTO members. Further, any regulation shall not be more trade-restrictive than necessary to fulfil a 'legitimate objective', as defined in Article 2.2 as follows:

Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.¹

5.8 Mr Ravi Kewalram, Assistant Secretary, Trade Law Branch, Department of Foreign Affairs and Trade, advised the Committee that consumer information provided through country of origin labelling 'is considered very clearly a legitimate subject for regulation'.² However, Mr Kewalram highlighted to the Committee that:

... the key thing with respect to the international obligations ... is whether the design and application of that regulation is even-handed in terms of as between importers or as between importers and domestic producers and not unnecessarily acting as obstacles to trade and so on. But there is no issue with the concept that

1 *General Agreement on Tariffs and Trade 1994*, Article 2.2.
<www.wto.org/english/docs_e/legal_e/17-tbt_e.htm>, accessed 1 September 2014.

2 Mr Ravi Kewalram, Assistant Secretary, Trade Law Branch, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 8 May 2014, p. 15.

[country of origin labelling] is entirely consistent with our trade agreements.³

- 5.9 Similarly, Ms Lyndall Milward-Bason from the Department of Industry stated that the relevant test to assess Australia's regulations against its international obligations would be whether Australia was creating a barrier to trade or distorting trade.⁴
- 5.10 The GATT also provides that laws and regulations relating to the labelling of imported products shall not impact in a way that would materially reduce their value, or unreasonably increase their cost.⁵

Technical Barriers to Trade Agreement

- 5.11 The Technical Barriers to Trade Agreement (TBT Agreement) requires members of the WTO to ensure that:

... regulations, standards, testing and certification procedures do not create unnecessary obstacles, while also providing members with the right to implement measures to achieve legitimate policy objectives.⁶

- 5.12 Under the TBT Agreement, and as a member of the WTO, Australia's domestic regulations must not create unnecessary obstacles to trade, or give its domestic producers an unfair advantage over imports (the national treatment principle) or give the imports of a WTO member an unfair advantage over other members (the most favoured nation principle).⁷

Agreement on Rules of Origin

- 5.13 The Agreement on Rules of Origin requires members of the WTO to ensure:

- that their rules of origin are transparent;

3 Mr Ravi Kewalram, Assistant Secretary, Trade Law Branch, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 8 May 2014, p. 15.

4 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 17 July 2014, p. 4.

5 *General Agreement on Tariffs and Trade 1994*, Article 9.4. <www.wto.org/english/docs_e/legal_e/17-tbt_e.htm>, accessed 1 September 2014.

6 World Trade Organisation, *Overview of the Technical Barriers to Trade Agreement*, <www.wto.org/english/tratop_e/tbt_e/tbt_e.htm>, accessed 3 September 2014.

7 *Technical Barriers to Trade Agreement*, Article 2.1; see also World Trade Organisation, *Technical Barriers to Trade: Technical explanation - Non-discrimination and national treatment*, <www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm>, accessed 3 September 2014.

- that they do not have restricting, distorting or disruptive effects on international trade;
 - that they are administered in a consistent, uniform, impartial and reasonable manner; and
 - that they are based on a positive standard (stating what does confer origin rather than what does not).⁸
- 5.14 Though the Agreement on Rules of Origin aims at long-term harmonisation of the standards which would be applied by all WTO members, the WTO parties have yet to reach agreement on these standards.⁹

Codex Alimentarius Commission

- 5.15 Independent of the harmonisation effort under the Agreement on Rules of Origin, the Codex Alimentarius Commission (Codex) is an intergovernmental body developed to harmonise international food standards, guidelines and codes of practice to protect the health of consumers and ensure fair practices in the food trade.¹⁰
- 5.16 Australia has been a member of Codex since its founding in 1963.¹¹ The *Codex Alimentarius* contains the international standards dealing with the production and safety of food and as such is the international context for the *Australia New Zealand Food Standards Code*.¹²
- 5.17 Codex has developed over 300 codes of practice, guidelines, standards and other documents of 'standards' which collectively have become the global reference point for consumers, food producers and processors, national food control agencies and the international food trade.¹³

8 World Trade Organisation, *Rules of origin: made in ... where?* <www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm#origin>, accessed 2 September 2014; see also World Customs Organisation, *WTO Agreement on Rules of Origin*, <www.wcoomd.org/en/topics/origin/instrument-and-tools/comparative-study-on-preferential-rules-of-origin/specific-topics/general-topics/wto-topic.aspx>, accessed 2 September.

9 World Trade Organisation, *Rules of origin: made in ... where?* <www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm#origin>, accessed 2 September 2014.

10 Codex Alimentarius Commission, *International Food Standards*, <www.codexalimentarius.org/>, accessed 27 August 2014.

11 Codex Alimentarius Commission, *List of Codex Members*, <www.codexalimentarius.org/members-observers/members/en/?no_cache=1>, accessed 27 August 2014.

12 NSW Food Authority, *submission 45*, p. 6.

13 Codex Alimentarius Commission, *Understanding the Codex Alimentarius*, 3rd Edition, As published by World Health Organisation and Food and Agriculture Organisation of the United Nations, 2006, v; <www.codexalimentarius.org/about-codex/understanding-codex/en/>, accessed 1 September 2014.

- 5.18 The Codex General Standard for the Labelling of Pre-packaged Foods provides:
- The country of origin of the food shall be declared if its omission would mislead or deceive the consumer; and
 - 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.¹⁴
- 5.19 Australia's regulation of country of origin labelling is considered by some industry groups as more onerous than international Codex provisions.¹⁵

Effect of obligations on the current regulatory framework

- 5.20 Consistent with these obligations, Australia's country of origin food labelling framework does not seek to prejudice foods from any particular country, or to favour goods produced in Australia.¹⁶ As explained in chapter two, neither the *Australia New Zealand Food Standards Code* (the Code) or the Australian Consumer Law (ACL) favour Australian products over imported products, and these regulations apply equally to imported and locally produced goods.
- 5.21 Yet as chapter four explains, there is significant confusion and consternation amongst consumers and industry about the current system, leading many stakeholders to call for a reform of the current system. Stakeholder reform proposals are addressed in chapter seven. Further, past reform proposals have attempted to address these concerns, however few have been accepted by past governments. In part these proposals have been rejected on the basis that, if proceeded with, Australia would be favouring its domestic producers in breach of its international obligations as outlined above (see chapter six).
- 5.22 On this point, the Department of Industry cautioned that:
- Any attempt to change the [current] framework to restrict trade or to encourage consumers or producers to substitute imported products or ingredients with Australian products or ingredients could be seen as inconsistent with a range of Australia's international trade obligations, with possible penalties applying.¹⁷

14 *General Standard for the Labelling of Prepackaged Foods* (CODEX STAN 1-1985), [4.5] <www.codexalimentarius.org/download/standards/32/CXS_001e.pdf>, accessed 27 August 2014.

15 Australian Industry Group, *submission 48*, p. 9.

16 Department of Industry, *submission 20.1*, p. 8.

17 Department of Industry, *submission 20.1*, p. 8.

Current WTO dispute regarding American origin labelling laws

- 5.23 This section provides an example of where a member of the WTO has amended its country of origin labelling requirements in an apparent breach of their obligations.
- 5.24 During the Inquiry, the Committee was advised of a matter in its final stages of the WTO dispute settlement process involving country of origin labelling. The dispute was brought against the United States of America by Mexico and an additional fourteen third parties, including Australia, Canada and New Zealand.¹⁸
- 5.25 The dispute concerns recent changes to America's country of origin labelling regulations as they apply to imported cattle and pigs which are subsequently used in the domestic production of beef and pork products in the United States. As the complainant, Mexico argued that the determination of the origin of these products deviates from international standards and which are not justified as necessary to fulfil a legitimate objective, therefore placing America in breach of the GATT, the Agreement on Rules of Origin and the TBT Agreement.¹⁹
- 5.26 The WTO's Appellate Body concluded in June 2012 that America's measures were inconsistent with its international trade obligations because it accorded less favourable treatment to imported livestock than to domestic livestock (in breach of the national treatment principle). The Appellate Body also found that the TBT Agreement:
- ... does not impose a minimum threshold level at which the measure must fulfil its legitimate objective; rather, it is the degree of the fulfilment that needs to be assessed against any reasonably available less trade-restrictive alternative measures.²⁰
- 5.27 Ms Milward-Bason of the Department of Industry advised that other countries are introducing a range of tariff lines and higher duties in retaliation for the trade-restricting regulation:
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18 World Trade Organisation, *Dispute Settlement: Dispute DS386 – United States – Certain Country of Origin Labelling Requirements*, 16 April 2014, <www.wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm#bkmk386r>, accessed 3 September 2014.

19 World Trade Organisation, *Dispute Settlement: Dispute DS386 – United States – Certain Country of Origin Labelling Requirements*, 16 April 2014, <www.wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm#bkmk386r>, accessed 3 September 2014.

20 World Trade Organisation, *Summary of Key Findings – US Country of Origin Labelling (DS384,386)*, <www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds386sum_e.pdf>, accessed 3 September 2014.

We know that some countries are getting into trouble. The US at the moment is very much in trouble for new rules that it has put in place that encourage its cattle producers not to buy cattle in from Mexico or Canada. At the moment, Canada has already put out a list of tariff lines that it will impose higher duties on in retaliation for that, and that is WTO permitted retaliation if it is found that whatever the US has done to fix that problem has not been successful. We are very wary of making any changes to [Australia's] framework that might lead to [similar] retaliation in that respect.²¹

- 5.28 Ms Milward-Bason advised that the case currently before the WTO between the United States and Mexico, is 'probably going to be fairly definitive in terms of where you cannot go'.²²
- 5.29 The WTO advises on its website that the 'Chair of the compliance panel ... expects to issue its final report to the parties towards the end of July 2014'.²³ At the time of writing, the report has not yet been made publicly available.

Food imports from New Zealand

- 5.30 A recurring theme of stakeholder concern and confusion throughout the inquiry was the status of food imports from New Zealand and the extent to which Australian law applies to those imports.
- 5.31 The Committee heard from multiple respected industry groups, consumer advocates and other organisations that their understanding of the current system was that food can be imported from New Zealand without a country of origin label.²⁴ The Committee found this to be a widespread misunderstanding of Australia's country of origin labelling system based

21 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 17 July 2014, p. 2.

22 Ms Lyndall Milward-Bason, Manager of Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 17 July 2014, p. 4.

23 World Trade Organisation, *Dispute Settlement: Dispute DS386 – United States – Certain Country of Origin Labelling Requirements*, 16 April 2014, <www.wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm#bkmk386r>, accessed 3 September 2014.

24 NSW Farmers, *submission 40*, p. 9;
CHOICE, *submission 47*, p. 9;
Australian Food and Grocery Council, *submission 35*, p. 5;
Australian Industry Group, *submission 48*, p. 9.

on an incomplete application of the complex legal arrangements between the two countries, chiefly, the Trans-Tasman Mutual Recognition Arrangement (TTMRA).

- 5.32 Contrary to common belief, foods imported into Australia from New Zealand must state their country of origin on their labels. The following section of the chapter will examine the TTMRA and the application of New Zealand labelling laws within Australia under the terms of that agreement.

What is the Trans-Tasman Mutual Recognition Arrangement?

- 5.33 The TTMRA is an arrangement between the Commonwealth, State and Territory Governments of Australia and the Government of New Zealand and 'is a significant step in developing an integrated trans-Tasman economy'.²⁵
- 5.34 Its purpose is to give effect to two mutual recognition principles relating to the sale of goods and the registration of occupations.²⁶ In the view of the New Zealand High Commissioner, His Excellency Mr Chris Seed, the TTMRA reduces regulatory barriers and costs of trade between the two countries; 'it is the world gold standard for mutual recognition'.²⁷
- 5.35 The first of two mutual recognition principles is relevant to this inquiry. Under the TTMRA, a good that may legally be sold in Australia may be sold in New Zealand, and a good that may legally be sold in New Zealand may be sold in Australia.²⁸
- 5.36 New Zealand does not have mandatory country of origin labelling. Rather, New Zealand law requires that if a claim to country of origin is made, that claim cannot be misleading or deceptive.²⁹ This is determined on an 'essential character test'. More information on New Zealand's domestic laws is provided later in this chapter.

25 Council of Australian Governments Committee on Regulatory Reform, *A User's Guide to the Trans-Tasman Mutual Recognition Arrangement*, May 1998, <www.dfat.gov.au/geo/new_zealand/ttmra_users_guide.pdf>, accessed 10 July 2014, p. 9.

26 Council of Australian Governments Committee on Regulatory Reform, *A User's Guide to the Trans-Tasman Mutual Recognition Arrangement*, May 1998, <www.dfat.gov.au/geo/new_zealand/ttmra_users_guide.pdf>, accessed 10 July 2014, p. 10.

27 His Excellency Mr Chris Seed, High Commissioner, New Zealand High Commission, *Committee Hansard*, Canberra, 29 May 2014, p. 1.

28 Council of Australian Governments Committee on Regulatory Reform, *A User's Guide to the Trans-Tasman Mutual Recognition Arrangement*, May 1998, <www.dfat.gov.au/geo/new_zealand/ttmra_users_guide.pdf>, accessed 10 July 2014, p. 10.

29 New Zealand High Commission, *Submission 49.1*, p. 1; New Zealand Commerce Commission, *The Fair Trading Act – Place of Origin Representations*, January 2012, p. 1.

- 5.37 The absence of mandatory country of origin labelling in New Zealand in combination with the provisions of the TTMRA as explained above, appears to have led many stakeholders to assume that foods imported into Australia from New Zealand are not required to state their country of origin. This is incorrect. There are key exceptions provided in the TTMRA, most notably the *Commerce (Trade Descriptions) Act 1905*.

The exception to the TTMRA: the *Commerce (Trade Descriptions) Act 1905*

- 5.38 The TTMRA allows food to be sold in Australia without meeting Standard 1.2.11 of the Code or the ACL, if it can be legally sold in New Zealand.³⁰

- 5.39 However, the *Commerce (Trade Descriptions) Act 1905* (CTD Act) is exempted from the operation of the TTMRA.³¹ The Department of Industry submitted:

The Commerce (Imports) Regulations 1940 made for the purposes of [the CTD Act] require all articles of food and beverages for human consumption to have affixed to them a trade description that includes the country in which it is made and produced. Under the [CTD Act] the trade description must not be false (or misleading). This means that Australian law still requires all food imported from New Zealand to be labelled with the country in which it is made or produced, and that such a label must not be false or misleading.³²

- 5.40 There was some confusion throughout the inquiry as to whether the CTD Act merely requires the customs documentation associated with the import to state its country of origin.³³ However, Ms Milward-Bason of the Department of Industry reassured the Committee that the CTD Act requires that food products must be physically labelled with a country of origin representation, that is on the food's packaging or on fresh produce stickers as appropriate, and not just on the entry documentation for Customs purposes.³⁴

30 Department of Industry, *submission 20.1*, p. 6.

31 *Trans-Tasman Mutual Recognition Act 1997*, Schedule 1 – Exclusions, Part 2. See also Department of Industry, *submission 20.1*, p. 6.

32 Department of Industry, *submission 20.1*, p. 6.

33 Mr Matthew Aileone, First Secretary, New Zealand High Commission, *Committee Hansard*, Canberra, 29 May 2014, p. 5.

34 Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard* Canberra, 17 July 2014, p. 1.

- 5.41 If a food product is imported into Australia from any country without a country of origin label on the product itself, Customs will find that that importer will be in breach of the CTD Act.³⁵ The penalty for importing goods with a false trade description is \$10 000.³⁶
- 5.42 Although foods imported from New Zealand must state their country of origin on the label when they reach Australian shores, the laws that govern the terms used on that label are those of New Zealand, not Australian laws as explained in chapter two. This is because of the mutual recognition arrangements under the TTMRA. Labelling laws in New Zealand are discussed below.

Country of origin labelling laws in New Zealand

- 5.43 As New Zealand has not adopted Standard 1.2.11 of the Code, New Zealand does not have mandatory country of origin labelling requirements for food.³⁷
- 5.44 The New Zealand High Commission in Australia explained the policy rationale for this approach:
- ... knowing the country of origin does not convey whether the food is safe or suitable. Rather, this is achieved by ensuring compliance with New Zealand's strict food safety and biosecurity laws.³⁸
- 5.45 Although the *Fair Trading Act 1986* (NZ) does not require any product to be labelled with a place of origin, where a product is labelled, any claims made about its origin must not be misleading or deceptive.³⁹ As described in chapter two, the ACL has an identical prohibition:
- ... however, unlike the [New Zealand] Act, the [Australian Consumer Law] includes safe harbour provisions for certain country of origin representations.⁴⁰
- 5.46 In New Zealand, food products are tested against the following question: 'where is the essential character of the food created?'.⁴¹ The New Zealand

35 Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard* Canberra, 8 May 2014, p. 11.

36 *Commerce (Trade Descriptions) Act 1905*, s 9(1).

37 New Zealand High Commission, *submission 49*, p. 1.

38 New Zealand High Commission, *submission 49*, p. 1.

39 *Fair Trading Act 1986* (NZ), s 13(j); New Zealand High Commission, *Submission 49.1*, p. 1.

40 New Zealand High Commission, *submission 49.1*, p. 1.

41 New Zealand High Commission, *submission 49.1*, p. 1; see also New Zealand Commerce Commission, *The Fair Trading Act – Place of Origin Representations*, January 2012, p. 1.

High Commission advised 'that there is no universal test to determine this and each case will turn on its own facts'.⁴² Mr Matthew Aileone, First Secretary at the New Zealand High Commission, explained how this system operates:

New Zealand [has] a complaints based system ... where if something is misleading you take it up with the Commerce Commission. We do take those complaints on a case-by-case basis, but in terms of food the key test in New Zealand is where the essential character of that food is added. On top of that there is also the jurisprudence in the case law in terms of complaints or any prosecutions that have taken place.⁴³

5.47 For commercial reasons, suppliers for the domestic New Zealand market will voluntarily include country of origin information on the label in most cases.⁴⁴ Where they choose to do so, those claims must be truthful and not misleading. According to the New Zealand High Commission, this means that if a food says 'Made in New Zealand', it must be just that.⁴⁵

5.48 The High Commission also advised that the New Zealand Commerce Commission will apply the following common law principles:

- where a significant step in the manufacturing process from raw materials to final product occurs overseas, it will not be appropriate to label the product 'made in New Zealand';
- significant differences in taste, appearance, and smell after the manufacturing process will be relevant in deciding whether a country of origin representation is misleading in the context of consumer goods; and
- the canning process alone is not the manufacturing process.⁴⁶

5.49 Understanding New Zealand law is important in the Australian domestic environment as these laws still apply in Australia once New Zealand food exports reach Australian shores. Although food imports from New Zealand into Australia must be physically labelled with a country of origin representation under the CTD Act, the TTMRA provides that it is New Zealand law that would govern what those representations may legally state. The following section explores this further.

42 New Zealand High Commission, *submission 49.1*, p. 1.

43 Mr Matthew Aileone, First Secretary at the New Zealand High Commission, *Committee Hansard*, Canberra, 29 May 2014, p. 3.

44 New Zealand High Commission, *submission 49*, p. 3.

45 New Zealand High Commission, *submission 49*, p. 3.

46 New Zealand High Commission, *submission 49.1*, p. 2.

Application of New Zealand domestic law in Australia

- 5.50 The TTMRA provides for the reciprocal extension of Australian and New Zealand laws into the jurisdiction of the other. Under the TTMRA, a good that may be legally sold in Australia may be sold in New Zealand, and a good that may legally be sold in New Zealand may be sold in Australia. Therefore, the labelling requirements established in New Zealand law will apply to the point of sale of the good in Australia.
- 5.51 In practice, this would mean that if a can of soup was imported into Australia from New Zealand, the laws that would govern what representations could be made to declare its origin (as required under the CTD Act), would be the New Zealand ‘essential character’ test and the prohibition of misleading or deceptive provided in the *Fair Trading Act 1986* (NZ).
- 5.52 Therefore, if the soup were to be labelled as ‘Made in New Zealand’, it would have to satisfy the ‘essential character’ test so as to not be misleading or deceptive to Australian consumers. The soup would not be subject to the ACL and the established safe harbours as explained in chapter two.
- 5.53 However, should a food product not satisfy the requirements of New Zealand law, the TTMRA provisions would not apply and those foods would be subject to Australian regulation (principally the ACL) as described in chapter two.⁴⁷
- 5.54 At a public hearing, Ms Milward-Bason from the Department of Industry explained how this will operate in practice:
- New Zealand itself has laws about misleading or deceptive false origin claims. So, if you have made a false origin claim on a product that comes into Australia from New Zealand, if that product could not be sold in New Zealand safely then it cannot be sold in Australia, and then it does become subject to our laws. If you had a product that said ‘Made in New Zealand’ and it was obviously from China then you would not be able to say ‘Made in New Zealand’ and get away with it in Australia because you would not be able to sell that product legally in New Zealand with that label, and so you could not sell it legally in Australia with that label. And the Consumer Law would then come into play.⁴⁸

47 Department of Industry, *submission 20*, p. 7.

48 Ms Lyndall Milward-Bason, Manager, Trade Facilitation Section, Trade and International Branch, Portfolio Strategic Policy Division, Department of Industry, *Committee Hansard*, Canberra, 8 May 2014, p. 10.

- 5.55 The myth that foods imported into Australia from New Zealand do not require a country of origin statement appear to also have fostered concerns among consumer and industry groups that Australian laws are being circumvented by importers staging their products in New Zealand prior to final importation into Australia. These concerns are addressed below.

Staging of food imports in third countries

- 5.56 The Committee was specifically tasked in its terms of reference to examine whether Australia's country of origin labelling laws are being circumvented by staging imports through third countries. A number of stakeholders raised this as a concern throughout the inquiry,⁴⁹ however, despite many requests by the Committee, specific examples of this practice were not received at any stage during the inquiry.
- 5.57 The question of whether Australia's laws were being circumvented by importers 'staging' their products in New Zealand before importing them into Australia under TTMRA, appears to have been first raised during an inquiry by the Senate Select Committee on Australia's Food Processing Sector in 2012.⁵⁰ The Senate Select Committee subsequently recommended to the ACCC that it investigate the claim.⁵¹
- 5.58 During this current inquiry, a number of stakeholders echoed the concerns raised in the Senate Select Committee's inquiry.⁵² These concerns are heightened by the practice of consumers using country of origin labelling as indicators of food safety as explained in chapter four.
- 5.59 For example, AUSVEG asserted that it was informed from sources in New Zealand that China was exporting fresh produce to New Zealand, adding local seasoning and packaging that produce. That packaged product was then exported into Australia under a label 'Made in New Zealand' or

49 Australian Made Campaign Limited, *submission 18*, p. 13;
Australian Honey Bee Industry Council Inc, *submission 15*, p. 3;
AUSVEG, *submission 39*, p. 5;
AUSBUY, *submission 13*, p. 21.

50 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, tabled 16 August 2012.

51 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, tabled 16 August 2012, Recommendation 13.

52 Australian Made Campaign Limited, *submission 18*, p. 13;
Australian Honey Bee Industry Council Inc, *submission 15*, p. 3;
AUSVEG, *submission 39*, p. 5;
AUSBUY, *submission 13*, p. 21.

'Made in New Zealand from local and imported product'.⁵³ AUSVEG concluded on these reports that 'New Zealand is a genuine backdoor for imported foods into Australia'.⁵⁴

- 5.60 In the absence of direct evidence of the practice provided during this inquiry, this Committee sought specific answers from the ACCC as to whether it has received evidence of the practice, and if so, what investigations it may have commenced. The ACCC responded:

The ACCC understands that the Committee has heard allegations that food may be imported through New Zealand and be sold in Australia with no country of origin claim at all or that food may be imported into New Zealand, repackaged and exported to Australia for sale but labelled 'Made in New Zealand'. It is not entirely clear to the ACCC how the concerns of regulatory gap might arise in circumstances where both Australian and equivalent New Zealand laws both prohibit false or misleading representations.

The ACCC notes the Senate Select Committee on Australia's Food Processing Sector recommendation that the ACCC investigate claims, when presented with direct evidence, that country of origin labels on processed foods imported into Australia under free trade and other international agreements are misleading. The ACCC has received a very small number of contacts about this issue. Those contacts were considered by the ACCC although not pursued due to insufficient evidence of a breach of the law.⁵⁵

- 5.61 The NSW Food Authority similarly stated that it is not in possession of evidence that Australian country of origin labelling laws are being circumvented.⁵⁶
- 5.62 Responding to these claims, the New Zealand High Commission advised:
- If Australian authorities suspect that a product imported into Australia from New Zealand under TTMRA is labelled in a misleading manner or have any other concerns, they can contact the New Zealand Ministry for Primary Industries or the New Zealand Commerce Commission.⁵⁷

53 AUSVEG, *submission 39*, p. 5;

Mr Richard John Mulcahy, Chief Executive Officer, AUSVEG, *Committee Hansard*, Sydney, 9 May 2014, p. 3.

54 AUSVEG, *submission 39*, p. 5.

55 ACCC, *submission 41.1*, p. 2.

56 NSW Food Authority, *submission 45*, p. 6.

57 New Zealand High Commission, *submission 49*, p. 3.

Committee comment

Australia's international trade obligations

- 5.63 As a significant food exporter, Australia has strong interests in ensuring compliance with international trade obligations including those relevant to country of origin labelling. Indeed, a diverse range of stakeholders⁵⁸ expressed their strong support for Australia to maintain compliance with its international trade obligations and opposed any reform proposals that would adversely impact the international trade of Australian goods and products.
- 5.64 However, the agreements which govern this free and fair access may nonetheless shape the parameters of Australian reform proposals. As stated above, country of origin labelling is considered as a legitimate objective for regulation, however, that regulation cannot favour domestic producers over importers, nor favour imports from one nation over another. Further, that regulation must not create unnecessary obstacles to trade in fulfilling that legitimate objective.
- 5.65 The Committee again reinforces the benefits that come with participating in the international trading system. This report proceeds on the understanding that Australia's international obligations are to be upheld and the Committee's recommendations are made on that basis.
- 5.66 The Committee awaits the outcome of the WTO matter brought by Mexico against the United States, as it is sure to guide future debates and reform proposals in Australia as well as internationally.

Food imports from New Zealand

- 5.67 Further comments and a recommendation can be found in chapter seven of the report.

Staging of food imports in third countries

- 5.68 The Committee received no specific evidence that food imports are being staged in New Zealand or any other country that would lead to Australia's laws being circumvented. Similarly, the ACCC has not

58 Citrus Australia – SA Region, *submission 28*, p. 5;
Australian Food and Grocery Council, *submission 35*, p. 5;
AUSVEG, *submission 39*, p. 5;
National Farmers' Federation, *submission 42*, pp. 6-7;
NSW Food Authority, *submission 45*, p. 6;
CHOICE, *submission 47*, p. 9;
Australian Industry Group, *submission 28*, p. 9;
Tasmanian Farmers and Graziers Association, *submission 51*, p. 5.

received evidence of this practice that would lead it to investigate the matter.

- 5.69 Though there are repeated reports of imports being staged in third countries so to avoid Australia's labelling requirements, these claims are thus far, unsubstantiated. The Committee is satisfied that the ACCC has the appropriate powers to investigate such claims, and will do so where there is sufficient evidence to warrant such action.
- 5.70 The Committee takes this opportunity to remind consumers and industry representatives that, if there are genuine concerns about false, misleading or deceptive conduct, the ACCC is the appropriate body with which to raise these issues.