

APPENDIX 3

Country of origin claims in the Australian Consumer Law

The *Trade Practices Act 1974* (TPA) was renamed the *Competition and Consumer Act 2010* (CCA) with effect from 1 July 2010. Subsequent amendment created the Australian Consumer Law (ACL) which commenced on 1 January 2011.¹ The ACL is located in Schedule 2 to the CCA. When the ACL was created it moved the consumer protection provisions into Schedule 2 and updated the consumer protection provisions by using a more 'plain English' approach. However it did not fundamentally change the content of the laws about country of origin representation.

Under the ACL:

- section 18 provides a general prohibition against conduct that misleads or deceives or is likely to mislead or deceive;
- paragraph 29(1)(a) provides a broad prohibition against making a false representation that goods, among other things, have a particular history. Importantly, a representation about the country of origin of goods is a representation of the history of those particular goods;
- paragraph 29(1)(k) provides a specific prohibition against making a false or misleading representation about the place of origin of goods; and
- section 33 prohibits a person from engaging in conduct which is liable to mislead the public as to the nature, manufacturing process, the characteristics, suitability for their purpose or the quantity of any goods. A representation about country of origin may be a representation about the nature, manufacturing process or the characteristics of particular goods.

In addition, the ACL sets out the 'safe harbour' provisions in table form for easier reading. These provisions have been developed from court decisions that have been made using the legislation itself.

¹ See the bill homepage for the *Practices (Australian Consumer Law) Bill (No. 2) 2010*, which includes links to the bill, its first and second reading, and the Explanatory Memorandum, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4335%22> (accessed 13 March 2013).

Defences

Section 255 of the CCA provides that the sections above are not contravened if the requirements set out in the table below are met:²

Representation	Requirements to be met
1 A representation as to the country of origin of goods	(a) the goods have been substantially transformed in that country; and (b) 50% or more of the total cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that occurred in that country; and (c) the representation is not a representation to which item 2 or 3 of this table applies.
2 A representation that goods are the produce of a particular country	(a) the country was the country of origin of each significant ingredient or significant component of the goods; and (b) all, or virtually all, processes involved in the production or manufacture happened in that country.
3 A representation as to the country of origin of goods by means of a logo specified in the regulations	(a) the goods have been substantially transformed in the country represented by the logo as the country of origin of the goods; and (b) the prescribed percentage of the cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that happened in that country.
4 A representation that goods were grown in a particular country	(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each significant ingredient or significant component of the goods was grown in that country; and (c) all, or virtually all, processes involved in the production or manufacture happened in that country.

² *Competition and Consumer Act 2010* Schedule 2, s. 255, www.comlaw.gov.au/Details/C2011C00003 (accessed 7 March 2013).

<p>5 A representation that ingredients or components of goods were grown in a particular country</p>	<p>(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and</p> <p>(b) each ingredient or component that is claimed to be grown in that country was grown only in that country; and</p> <p>(c) each ingredient or component that is claimed to be grown in that country was processed only in that country; and</p> <p>(d) 50% or more of the total weight of the goods is comprised of ingredients or components that were grown and processed only in that country.</p>
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Note: The regulations may prescribe rules for determining the percentage of the total costs of production or manufacture of goods attributable to production or manufacturing.

