



26 September 2016

Legal Metrology Branch
National Measurement Institute
PO Box 264
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Attention: Legal Metrology Consultation

Legal Metrology Policy Review Response to Discussion Paper

Introduction

The Food & Beverage Importers Association (“FBIA”) is an industry association that represents importers into Australia of food and beverages, both retail ready and ingredients for further processing. Members range from large, multi-national companies to small, specialist importers. Their imports include a wide range of commodities (eg vegetables, fruit, nuts, dairy, seafood, confectionery, oils) and in a range of formats (frozen, fresh, roasted, prepared, and canned). Further information on activities and management may be found at the Association’s website: www.fbia.org.au.

Policy objectives for legal metrology in Australia

The discussion paper sets out possible policy objectives for legal metrology for the purpose of providing direction for the administration of legal metrology functions. The FBIA agrees with the need to establish clear policy objectives for legal metrology in order to deliver legal metrology activities.

The discussion paper sets out the following policy objectives for discussion:

- Supporting confidence in the measurement system
 - Reduced disputation and transaction costs in trade transactions
 - Sound evidential basis for legal and regulatory measurements
- Facilitating a level playing field for business
- Consumer (or the broader term customer) protection
- Supporting industry development and technology innovation

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The Association sees these policy objectives as a sound basis for legal metrology. As noted in the paper, these objectives are inter-related, but priority should be given to ‘supporting confidence in the measurement system’ as the bedrock policy objective.

International cooperation and harmonization

The International Organization of Legal Metrology ‘OIML’ is an intergovernmental treaty organization which, among other activities,

- develops model regulations, standards and related documents for use by legal metrology authorities and industry,
- provides mutual recognition systems which reduce trade barriers and costs in a global market,

It is an “international standard-setting body” in the sense of the World Trade Organization’s Technical Barriers to Trade Agreement. OIML publications should therefore be applied, when appropriate, by all signatories of the TBT Agreement when developing technical regulations, in application of Article 2.4 of that Agreement:

"Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems."

The OIML develops recommendations that establish the performance requirements for measuring instruments and specify methods and equipment for testing whether instruments meet those requirements. In turn, OIML Member States agree to implement these recommendations to the greatest possible extent.

The FBIA strongly supports Australia’s participation in OIML activities and the development of international standards

We note that, where specifications of OIML recommendations are inconsistent with the national interest or impracticable because of particular circumstances in Australia, NMI can modify those specifications before adopting them in Australia. While not disputing Australia’s treaty rights, the association would hold that any departure from OIML recommendations should not be to the disadvantage of imports that are compliant with the OIML position.

In the same way as Australia, overseas regulators may depart from OIML recommendations for policy or practical reasons. Australia should seek to accommodate those justified practices of other jurisdictions. For example, we



understand that some overseas countries, including New Zealand & European Union countries, are moving from requiring products packed to the Average Quantity System ('AQS') to have the 'e' symbol on the label. This poses the question whether imports labelled without the symbol will be excluded from the AQS regime, even though other documents could prove the product was packed under an AQS system.

Another example is the approval of check weighers as accurate measuring instruments for trade. Some countries, e.g. Germany, the United Kingdom, have approved the use of check weighers as accurate measuring instruments for trade. However, in Australia, there is currently no check weigher that is pattern approved. This situation raises the question of whether products from overseas countries with only approved check weigher for measurement for trade are compliant to the Australian requirements.

One way to remove reduce the barriers that different regulations pose to cross-border trade is through greater regulatory cooperation. We note that one of OIML's objective is the promotion of mutual recognition schemes. We would recommend that the Review supports work by Australia to emphasise regulatory cooperation between jurisdictions and to promote mutual recognition schemes.

Principles-based approach to regulation

The FBIA supports the introduction of a principles-based approach to regulation into the trade measurement field. The guiding purpose of a principles-based approach is to shift the regulatory focus from process to outcomes and thereby to allow companies to be free to find the most efficient way of achieving the outcome required.

The disadvantages of a principles-based system centre on problems of ambiguity, which can undermine the system's intended protections and accountability. It would be necessary to provide informative guidance on the objectives to be met. One way would be to provide 'safe harbours' that provide compliance with the regulation. For example, the Australian Consumer Law provides criteria for country of origin claims that if met mean that the claim is not misleading.

Indeed, under the current system, we believe there is need for greater guidance on current requirements, such as tare validation.

Regulatory approaches for legal Metrology

The association believes that compliance and enforcement activities should focus on sales to consumers. Sales from one company to another, for example, of bulk products, are sold under contract and problems should be resolved under the contract of supply.



We would be happy to participate in any further consultation in the development of legal metrology policy.

Should you have any questions on these comments, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink that reads "A J Beaver". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

A J Beaver
FBIA