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## SUBMISSION TO THE SENATE STANDING COMMITTEE ON ECONOMICS

Inquiry into the Competition and Consumer Amendment  
(Country of Origin) Bill 2016

Submitted by

Ocean Oils Pty Ltd  
Mr Richard Saul  
Managing Director

## Introduction

Thank you very much for allowing me the opportunity to make this submission to the Senate Standing Committee on Economics relating to its inquiry into the Competition and Consumer Amendment (Country of Origin) Bill 2016.

Our company, Ocean Oils Pty Ltd, is a boutique manufacturer and supplier of a specialty marine-derived lipid known as "Squalene". In fact, we are the only manufacturer of Squalene in Australia. We are a totally Australian owned and operated entity and have been doing this business since 1993. The raw materials for our marine lipid production are drawn from licensed operators in strictly-managed, sustainable and endorsed fisheries in Australian and New Zealand waters.

Since 2000, we have supplied our Squalene in bulk, wholesale form to the export market and, since 2012, all supplies have gone to our loyal customers in USA, Japan and China. Our customers (and their downstream customers) have generated consumer acceptance and respect for our product on the basis of its quality and origin and the knowledge that it is derived from sustainable Southern Ocean fishery resources. In particular, Squalene is a highly valued and well-known product in various Asian communities.

The path of our bulk Squalene travels from our production/refining facility to distributor to various pharmaceutical companies that then package it in bottles of soft gel capsules and then to final retail sale. At retail level, it is likewise marketed as 'Squalene' and is used as a dietary supplement in the complementary medicine (human health food) market. This is the same or similar path as is taken by Krill Oil or Omega 3 Oil retailed in bottles of capsules etc.

## The Issues

Although we are the only Australian manufacturer of Squalene and although we sell not one drop of our Squalene in Australia, there are presently 59 brands of 'Australian Made' Squalene endorsed by the Australian Made Campaign Ltd (AMCL) and all 'regulated' by the Australian Competition and Consumer Commission (ACCC). There are also 11 branded and endorsed brands of 'Australian Made' Krill Oil. In addition, a recently completed Market Research Report undertaken on our behalf by the good people at Austrade China has revealed that there are 23 brands claiming to be 'Australian' or 'Australian Made' endorsed Squalene in the China market.

In more than two decades of legitimate operation, we now find this contrived situation is severely impacting on our ability to sell genuine Australian Squalene in legitimate competition with incredible amounts of cheap, imported 'Australian' and 'Australian Made' endorsed Squalene and we question whether some is the product it is endorsed to be.

How can it be so?

All of the supposed Squalene and Krill Oil in these Australian branded and endorsed products is imported and yet to date continues to be represented as 'Australian' or 'Australian Made'. Within Australia, this bizarre situation has arisen because under the guidance of the ACCC and subsequent endorsement by the AMCL, such products are deemed by the ACCC and AMCL to meet the two relevant criteria i.e.

- *"The product has been manufactured here (not just packaged or assembled); and*
- *50% or more of the cost of making it can be attributed to Australian materials and/or production processes."*

Regarding Squalene (and other expensive marine lipids such as Krill Oil etc.), it remains a puzzle to us how on earth so many companies can easily manipulate the system and supposedly meet the above criteria given **a)** their Squalene (and Krill Oil etc.) that is packaged in Australia is all imported and **b)** the bulk material cost of the Squalene and Krill Oil is far in excess of any packaging costs.

In other words, the cost of the oil inside the capsule is much greater than 50% of all the other production, packaging and labelling costs etc.

Given the situation that has arisen and is now out of control, we readily agree that these rules are in urgent need of review and fully support the efforts of our Commonwealth government and the members of this Senate Standing Committee on Economics in their sincere endeavour to examine and specify what constitutes '**substantial transformation**' in particular.

### **Detail**

#### **What constitutes 'Substantial Transformation'?**

Now, under the new legislation, we understand the main changes in the Bill will affect claims like 'Made in' and 'Manufactured in' by removing the confusing and corruptible 50% production cost test and by clarifying the **substantial transformation** test. Therefore please let us focus on this **substantial transformation** test.

We understand that, under the legislation, the revised definition of **substantial transformation** is that:-

*'Goods are substantially transformed in a country if ... as a result of one or more processes undertaken in that country, the goods are fundamentally different in **identity, nature or essential character** from all of their ingredients or components that were imported into that country.'*

Given all the considerations that bring us to the present situation, we believe that the Senate Select Committee's focus on this clarification of what truly constitutes **substantial transformation** is the crucial matter here.

This focus is a very significant step in the right direction to bring product 'honesty' to the consuming public that purchase in good faith these ingestible, Australian branded and endorsed products and also to bring better accountability to those who present these products for retail sale in various guises.

Given our unique perspective and experience in the specialty marine lipids industry these past 23 years, we wish to submit the following points:-

- The essential product specification elements as supplied by the bulk manufacturer of the Squalene, Krill Oil or Omega 3 Fish Oil etc. remain fundamentally identical from the time of manufacture of the bulk material right through to the product specification elements listed on the retail label of the bottles of these products when presented for retail sale. **NO substantial transformation** is inferred or indicated at any time from manufacturer to retailer.
- Squalene, Krill Oil and Omega 3 Oil etc. are all products that remain fundamentally identical in 'identity', 'nature' and 'essential character' from the time they are created at the manufacturer's premises to the time they are offered for retail sale in bottles of capsules. This is reflected in the unchanging material specification throughout, as mentioned above.

- The health benefit claims on the retail labels of these products are drawn from numerous laboratory studies of the identical bulk oil materials. **NO substantial transformation** is acknowledged or referred to in these claims because retail marketer wants us to be assured it is of the same stuff.
- This is reflected in the fact that there is **NO** change in the product's name from trade through to retail. Our bulk 'Squalene' is sold as 'Squalene' at retail level in bottles of capsules. Ditto occurs for Krill Oil and Omega 3 Oil etc. Again **NO substantial transformation** is indicated.

We submit to you this obvious evidence that there is **NO substantial transformation** of the product.

The packaging may provide a change in the form of the oil from 'bulk' to 'capsule' and the appearance from 'drum' to 'bottle of capsules', but this is **NOT substantial transformation**. To represent otherwise is dishonest, is seriously misleading and is deceptive.

Should the esteemed members of this Senate Select Committee have any doubts whatsoever regarding the points that I have made, or wish to obtain independent technical verification of these important facts, assistance to you is freely available from a globally-respected expert in the field of marine lipids.

Dr Nichols asks that you please contact him for assistance. His details are as follows:-

Dr. Peter D Nichols; BSc(Hons), PhD, FRACI, MAMSA, MNSA, MANZ-MBS  
Senior Principal Research Scientist  
Long-chain Omega-3 Oils; Biochemical Tracers  
CSIRO Food, Nutrition & Bio-based Products; Oceans & Atmosphere  
Hobart, TAS 7000, Australia

Adjunct Professor, School of Land and Food - TIA, University of Tasmania  
Honorary Research Associate – IMAS, University of Tasmania

Scientific Advisor – Seafood  
Omega-3 Centre

## Conclusion

The Inquiry's literature includes the following statement:-

*'The proposed changes to the substantial transformation test are aimed at providing businesses with greater certainty about what activities constitute, or do not constitute, **substantial transformation**. It will be clear that importing goods and undertaking minor processes that merely change their form or appearance are not sufficient to justify a 'made in' claim.'*

We applaud this stance.

In addition, we note your advice that:-

*'The revised definition (...of **substantial transformation**...) is to be complemented by improved guidance material, including lists containing examples of goods that are sufficiently different from their imported inputs to warrant a change in origin. Lists previously published during consultations on the proposed reforms to country of origin labelling conducted in December 2015 and January 2016 have been reproduced below. These lists are not final or exhaustive, and are still subject to consultation'*

In response to this advice, we kindly ask the Senate Select Committee's most careful consideration of the definition of **substantial transformation**.

We make the plea that it is very important for this *improved guidance material* and *lists* (as referred to above) to clearly indicate that the packaging of Squalene, Krill Oil and Omega 3 Fish Oil as described **DOES NOT** and **CANNOT** constitute a **substantial transformation** of the product. We ask your consideration in this crucial clarification so that those involved cannot falsely claim Australia as the country of origin through the '*safe harbour defence*' of *Australian Consumer Law*.

The fact that these products are represented at retail level using the same descriptors as the bulk materials is abundantly clear. They are not fundamentally different in *identity, nature or essential character*. This is reinforced by the priority of the vendor to market them as identical to the very same bulk marine lipid material from which they are made and about which the numerous health benefits are claimed.

We thank you in anticipation of your kind consideration and thank you very much for reading.

Please contact me if I may be of further assistance.

Yours sincerely,

Richard Saul  
Managing Director  
Ocean Oils Pty Ltd

