SUBMISSION TO THE SENATE STANDING COMMITTEE ON ECONOMICS Inquiry into the Competition and Consumer Amendment (Country of Origin) Bill 2016

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1. INTRODUCTION

Australian Made Campaign Limited (AMCL) welcomes the opportunity to make this submission to the Senate Standing Committee on Economics in respect of its review into the Competition and Consumer Amendment (Country of Origin) Bill 2016.

AMCL has for the past 17 years promoted and administered the Australian Made, Australian Grown logo, a certification trade mark concerned entirely with country of origin. AMCL has therefore a deep and ongoing interest in the legislative framework surrounding country of origin claims. Apart from some more stringent criteria introduced in 2011 for food products, AMCL has always sought to have the AMAG Logo Code of Practice reflect the legislated provisions for a country of origin claim (ie the 'safe harbours').

Whilst this Bill relates to all products for which a country of origin claim might be contemplated, food nevertheless has been the major catalyst in its origins.

AMCL has a very real interest in the country of origin labelling of food, and has made submissions to various Government reviews in the past, including the Blewett review in 2010, the Senate Select Committee on Australia's Food Processing Sector (2012) and the House of Representatives Standing Committee on Agriculture and Industry Inquiry into Food Origin Labelling (2014).

Many Australian consumers are concerned about the origins of the food they eat. Such concerns are driven by a range of factors – economic, health and safety, ethical and environmental. However there is ample evidence that many consumers do not understand the country of origin claims in general use and also that they do not find that these claims provide sufficient information about the product.

The federal Government has attempted to address the concerns about the origin of foods with a package of reforms consisting of a new country of origin labelling regime for food products sold in Australia (as set out in the *Country of Origin Food Labelling Information Standard 2016*) and the current Bill.

The *Competition and Consumer Amendment (Country of Origin) Bill 2016* is a revision of the country of origin 'safe harbours' set out in Part 5-3 of the Australian Consumer Law. Principally, it is an attempt to both simplify and clarify the requirements for making a claim that a product is "Made in" a country.

AMCL has provided extensive feedback to the Department of Industry, Innovation and Science Country of Origin Labelling Taskforce on the development of both the Information Standard and the Bill currently before Parliament.

In this submission we will provide detailed comment on specific aspects of the Bill. While we support the changes embodied in the Bill overall, we have ongoing concerns about the lack of objectivity in the key criteria and the absence of definitions of key concepts. AMCL's input derives from its extensive experience in making decisions on country of origin claims on a daily basis and its exposure to the practical difficulties the legislated framework raises for consumers and businesses.

It is our belief that any legislative change must of course be supported by an extensive education campaign to ensure consumers and businesses are appropriately informed. This should be delivered by a partnership between Government and industry.

2. BACKGROUND – AUSTRALIAN MADE, AUSTRALIAN GROWN LOGO

The Australian Made, Australian Grown (AMAG) logo was introduced by the federal Government in 1986 as a certification trade mark across all 34 classes of goods.

Australian Made Campaign Limited (AMCL) is the not-for-profit public company set up in 1999 by the business community (through the Australian Chamber of Commerce and Industry network) to administer the logo.

The logo, consisting of a stylised kangaroo inside a triangle, is a registered certification trade mark governed by a Code of Practice approved by the ACCC. Ownership of the logo was transferred to AMCL in 2002.

AMCL administers the logo in accordance with a Deed of Assignment and related Management Deed with the federal Government and reports annually to the Department of Industry, Innovation and Science on its operations.

The logo can be used with a number of descriptors underneath, including 'Australian Made', 'Product of Australia', 'Australian Grown' and 'Australian Seafood'.

AMCL's core funding is derived from licence fees paid by companies to use the logo. It receives no financial support from Government for its core operations, which are to:

- license companies to use the logo,
- administer a strict compliance regime governing the logo's use, and
- promote the logo to consumers and businesses, thereby reinforcing its credentials as a means of promoting/selling genuine Australian products and produce.

Over 2500 companies are currently licensed to use the AMAG logo, with numbers growing strongly in recent years. Over 98% of Australian consumers recognise the AMAG logo and trust is over 88%.

In July 2015, the federal Government announced a new country of origin labelling system for food products sold in Australia which will require most food products made or grown in Australia to carry a 3-part label incorporating the AMAG logo. This has been implemented through the *Country of Origin Food Labelling Information Standard 2016* which came into effect on 1 July 2016.

As a consequence AMCL no longer licenses use of the logo on food products to be sold in Australia. AMCL has worked with DIIS to amend its Code of Practice to reflect this change. AMCL continues to license use of the logo on non-food products and food products for export.

3. SPECIFIC COMMENTS ON THE BILL

3.1 'Grown in' and 'Product of' representations

The Bill provides an unchanged set of criteria for 'Product of' claims and a (mercifully) simplified set of criteria for 'Grown in' claims.

AMCL has previously expressed our concern that the terms "significant ingredient" and "significant component" continue to be undefined in the legislation. While the ACCC has in the past provided some guidance on the meaning of these terms, our experience has been that businesses continue to struggle with practical application of this test.

Some businesses opt to make a 'Made in Australia' claim rather than the more premium "Product of Australia' claim because they are uncertain as to whether some ingredients are 'significant' or not. Others tend to be more liberal in their interpretation.

Similarly, the term "all or virtually all" presents a stumbling block, suggesting as it does that some manufacturing processes can occur offshore without providing further guidance.

AMCL has also mentioned that businesses often ask whether packaging materials are considered significant for the purposes of a Product of Australia claim. This is addressed in section 255(8) for 'Grown in' claims but not for 'Product of' claims.

AMCL strongly recommends that the Bill provide greater clarity around these key concepts. For example, a "significant ingredient" could be defined as any ingredient excluding preservatives, food processing aids, food colouring, etc. In the absence of a definition within the legislation, extensive guidance is required with examples from a range of industries.

The marketing advantages of the more premium claims are not lost on business and it is important therefore that clarity is provided so businesses can act with some certainty.

3.2 'Made in' representations

The Bill makes two key changes to the criteria for a claim that a product was 'made in' a country - removal of the requirement for at least 50% of the cost of production to occur in that country, and a new definition of 'substantial transformation'.

Removal of 50% cost of production criterion

AMCL has previously commented that businesses tend to have difficulty assessing their compliance with this criterion, for a number of reasons:

- Uncertainty about origin of ingredients or components - typically businesses tell us that they buy from an Australian supplier but don't know whether the ingredients/components are imported or not. With some types of products, the source of ingredients will vary from one order to another depending on season and availability.

- If they use a contract manufacturer, they often will not have access to detailed production costings, and their manufacturer may be reluctant to provide this information.

- Accounting for currency fluctuations and calculating overheads and allocating a proportion to individual products are also sources of difficulty.

Some manufacturers have commented to us that they believe the test penalises more efficient manufacturers. For example, a small factory with outdated machinery and a higher level of manual processing may be able to meet the 50% while a more highly automated production process may not, even where they are producing similar products from identical inputs.

Our understanding is that removal of the 50% test will result in more companies in the pharmaceuticals/ complementary medicines and industrial/agricultural chemicals industries being able to make Made in Australia claims. These are industries where the principal active ingredients are relatively high cost and generally not manufactured in Australia.

Overall, AMCL supports the removal of the 50% cost test, although we have some concerns that it may result in adverse consequences for some Australian suppliers of inputs. This will occur where a manufacturer opts to source cheaper inputs offshore, knowing that it will not affect their capacity to make a Made in Australia claim. An example of this is a manufacturer of soft gel capsules who currently purchases gelatin from an Australian manufacturer because it assists them to meet the 50% threshold. The local packaging industry may also be impacted adversely by this change.

Greater guidance on what does and what does not constitute substantial transformation for different types of products may mitigate the impact on Australian suppliers in that it can specify what transforming activities need to be undertaken in Australia; and therefore the extent to which inputs or components can be transformed overseas.

Definition of 'substantial transformation'

AMCL's principal concern in this area is that both the current and the proposed definition of 'substantial transformation' are very far from providing a clear and objective criterion against which to assess claims.

The phrase "fundamentally different in identity, nature or essential character" is highly subjective and open to interpretation.

Although the ACCC can and does publish guidelines on country of origin claims in which it expresses its views on what may or may not constitute substantial transformation, it acknowledges that "interpretation of the law will always ultimately be a matter for the courts" and such interpretation occurs on a case by case basis.

There is currently no mechanism by which a manufacturer may obtain a definitive answer as to whether it may safely claim that its product is 'made in Australia' or a 'product of Australia'. A company may hesitate to make a country of origin claim for fear that competitors (usually the source of such questioning) will challenge its validity.

AMCL has previously argued it would be helpful if Government were to provide a simple administrative mechanism whereby a manufacturer who is uncertain about which country of origin claim they can make can apply for a ruling on the matter, for an appropriate fee and within a reasonable timeframe. An example of such a system is the US Customs and Border Protection Customs Rulings which are also available via a searchable online database (http://rulings.cbp.gov/). We understand that Australian Customs are also able to provide Origin Advice Rulings.

In the absence of such a process, we look forward to assisting with the drafting of comprehensive and industry-specific guidance publications.