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26 September 2016

Mr Mark Fitt  
Committee Secretary  
Senate Economics Legislation Committee  
Parliament House  
PO Box 6100  
Canberra ACT 2600

Dear Mr Fitt

**Competition and Consumer Amendment (Country of Origin) Bill 2016 : Senate Economics Legislation Committee Inquiry**

The Australian Industry Group (Ai Group) welcomes the opportunity to provide comments, on behalf of the Australian confectionery industry, to the Senate Economic Legislation Committee Inquiry into the *Competition and Consumer Amendment (Country of Origin) Bill 2016* provisions.

This submission is made on behalf of the Ai Group's Confectionery Sector, in particular. The Ai Group represents some 130 companies that include sugar, chocolate and gum confectionery manufacturers; suppliers to the industry, from ingredients to packaging and machinery; and distributors from the confectionery supply chain. As a national organisation, the Ai Group and its affiliates represent the interests of 60,000 businesses employing more than 1 million staff throughout Australia.

We congratulate the Government on the responsive role it has undertaken in bringing revised country of origin food labelling requirements to fruition. This has been a major and comprehensive process and the Government should be recognised for the constructive and collaborative manner in which it has consulted and developed this new system which aims to meet the many and varied objectives of numerous stakeholders.

Our specific comments relate to the revised definition of **substantial transformation** referenced in the *Country of Origin Food Labelling Information Standard 2016 (Information Standard)* and more particularly as incorporated into the Australian Consumer Law (ACL) Competition and Consumer Act through the provisions of the *Competition and Consumer Amendment (Country of Origin) Bill 2016*.

The revised definition reads:

*"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."*

We understand and agree that the former 'made in' definition of substantial transformation warranted amendment. The removal of the 50% cost of production test, which was unnecessarily burdensome, was important, as was retaining the universally accepted test of last substantial transformation taking place in the country of origin claimed.



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Our concern, however, relates to interpretation of the new definition as it has been applied to some confectionery industry examples provided in the Bill's Explanatory Memorandum (and also reflected in the newly revised guide for business, current as of 1 July 2016).

The notes on clauses to the Bill, contained in the Explanatory Memorandum (page 89), offer a number of examples to illustrate where a product meets the requirements of substantial transformation and others that don't meet them.

Example that meets the substantial transformation requirements:

*Brazilian cacao is imported into Belgium. It is then converted to chocolate using local butter and sugar. It is finally moulded into chocolate truffles before export to Australia. If this product were labelled as 'Made in Belgium', it would meet this safe harbour defence.*

Example that doesn't meet the substantial transformation requirements:

*Bulk chocolate is imported into Australia from the United Kingdom. It is then formed into smaller blocks and packed for retail sale in Australia. If this product were labelled as 'Made in Australia', it would not comply with this safe harbour defence because chocolate was not substantially transformed here. Forming imported chocolate into smaller blocks and packaging them does not result in a product that is fundamentally different in terms of identity, nature or essential character. The last substantial transformation of the goods occurred in the United Kingdom where imported cocoa, cocoa butter and sugar were combined with local ingredients to make a new product with a fundamentally different identity and nature – chocolate.*

We agree with the example given regarding the Brazilian cacao (above).

However, we disagree with the example regarding bulk chocolate (also above) suggesting substantial transformation hasn't been achieved.

A number of Australian confectionery manufacturers purchase imported bulk industrial chocolate for further manufacturing. The additional processing in Australia to convert the industrial chocolate into a consumer-ready finished product is sophisticated and complex and adds significant product value.

Where industrial chocolate is imported into Australia, it is likely to be melted and conched in conching equipment, transferred through a series of food safety critical control points to a tempering machine. The process of tempering changes the chemical structure of the chocolate to ultimately give the consumer finished product its shine, snap, mouthfeel and associated organoleptic properties, such as smell, taste and texture.

The final chocolate, as processed consumer-ready product, may be used in a variety of ways, ranging from plain chocolate deposited to form blocks or spun to make Easter eggs or other novelty objects; combined with inclusions, ie fruit, nuts or mint chips for example; moulded with cream centres; or enrobed onto extruded products or praline centre or used in panned products such as chocolate coated nuts.

Throughout the process appropriate temperature management is maintained with the final processing through a cooling tunnel to set the product.



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We consider the above recommendation that, a country of origin statement should say *'Made in the United Kingdom'* or *'Made in the United Kingdom, packed in Australia'* erroneous and a failure to recognise the extent of the change in nature of the product.

The Ai Group is aware of the separate consultation being progressed by the Department of Industry, Innovation and Science, Country of Origin Labelling Taskforce to develop guidance material to complement the changes proposed in the Bill that is being prepared by the ACCC.

The Ai Group has indicated its willingness to participate in this consultation as it progresses and looks forward to doing so. We support this continuing effort by the Government to clarify and explain substantial transformation.

Thank you again for the opportunity to comment on the Senate Economics Legislation Committee Inquiry on the *Competition and Consumer Amendment (Country of Origin) Bill 2016*.

Yours sincerely

Timothy Piper  
Head - Victoria  
Head - Confectionery