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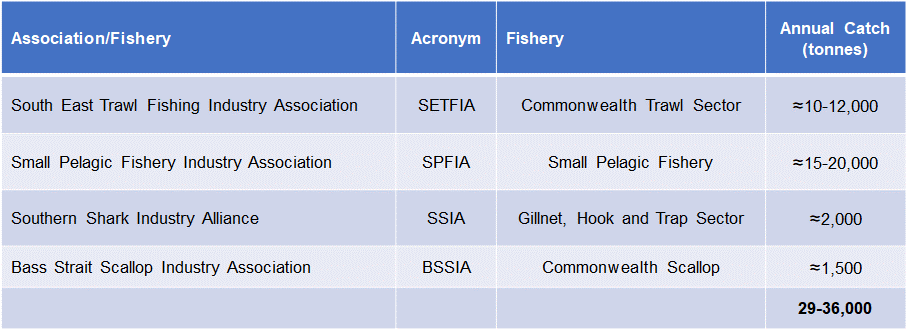
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**Submission on Eligibility for origin claims in the Complementary Medicines Sector**

**This submission is on behalf of a coalition of concerned and at risk wildcatch fishing small businesses in South-East Australia:**

This submission is from a coalition of fishing industry associations in South-East Australia listed in the table below . These associations represent various stakeholders in each of the four fisheries including; quota owners, fishers, co-operatives, wholesalers, processors and manufacturers. All four are incorporated under various Acts and hold not-for-profit status. We welcome the opportunity to comment on the Department’s proposal and would welcome a meeting with the Department.



**The Australian seafood industry is strongly trade exposed to imports and struggles to compete internationally with low cost unsustainable fisheries. Truth in labelling around county of origin is critical for the Australian industry’s survival because the Australian fishing industry can only compete on freshness and taste – the consumer associates this with local Australian fish:**

The FAO reports that global wildcatch fisheries production is 91m tonnes per annum. Australia is contributing less than 2% of this with annual wildcatch production of only 166,000 tonnes[[1]](#footnote-1). The reasons for Australia’s low production are varied; a lack of nutrient rich upwellings, distance from international markets, a strong Australian dollar that restricts export opportunities, high wages, high operating costs, lack of population centres across much of our coastline (logistics) and the world’s strongest and most precautionary fisheries management. Australia has the world’s third largest exclusive economic zone (1/3rd of which is marine parks) in the world but is only contributing 2% of the global production at a rate of only 490 grams per km2 per annum.

What this means is that in spite of growing seafood demand in Australia as a country we are a net importer with more than 70% of Australia’s seafood consumption imported. **As a net importer all Australian seafood businesses are therefore highly trade exposed to imports.**

The Commonwealth Government cost-recovers the cost of managing Commonwealth fisheries from industry. The strong precautionary management referred to above and the levied fisheries management cost contribute to high operating costs and to the Australian fishing industry’s weak economic competitive position relative to imports.

Australian seafood businesses compete on sustainability, taste and food safety. Collectively the Australian consumer associates these traits with Australian seafood (i.e. seafood made in Australia).

**This is why the Australian fishing industry is united in calling for stronger country of origin laws.**

SETFIA and its members lobbied the ACCC and Made in Australia Inc for truth in labelling around made in Australia claims appearing on encapsulated marine oils. [The subsequent ACC ruling that encapsulation **did not** constitute *substantial transformation*](https://www.accc.gov.au/business/advertising-promoting-your-business/country-of-origin-claims/country-of-origin-labelling-faqs) and was unlikely to justify a made in Australia claim was welcomed by the Australian fishing industry. This ruling was upheld in the [Federal Court Nature’s Care case](https://www.accc.gov.au/media-release/court-rules-fish-oil-capsules-not-%E2%80%98made-in-australia).

**2017’s truth in CoOL laws have not created problems. Instead, they have better informed the consumer about the products they buy:**

The contention in the Department’s consultation document (*Eligibility for origin claims in the Complimentary Medicines Sector*) is that the need to label complimentary medicines with truthful country of origin claims has “created problems” in that imported goods once labelled as made in Australia no longer carry this branding and consumers have less access to locally made products. This statement is not true.

Firstly, figures for the gross sales of vitamins and supplements increased between 2017 and 2018 (p10 consultation document) at a rate consistent with previous years.

Secondly, under the new laws the availability of Australian made product has not declined. Rather, genuinely Australian made products are now just easier to find given the amount of untruthful labelling surrounding the genuine products has reduced. This submission proposes that the goal of labelling is to allow the Australian consumer to make informed choices and not be misled. The 2017 food labelling law changes achieved this.

**2017’s truth in CoOL labelling laws reduced fake sales of marine oils such as this:**

|  |  |
| --- | --- |
|  | An example of how poor labelling laws can negatively impact Australian business follows. The oil product pictured to left was presumably encapsulated in Australia which, previous to the 2017 labelling law changes and ACC ruling, justified the made in Australia claim. It may or may not contain squalene oil (because the TGA does not test it) so the consumer cannot be guaranteed that it is derived from a shark. What is known is that it has no association with Tasmania, is not from fish or sharks caught in Tasmania and was not extracted in Tasmania or Australia. The shark pictured is a blue shark, this species is on [IUCN’s near threatened red list](https://www.iucnredlist.org/species/39381/10222811) and products derived from imported blue sharks are likely from highly unsustainable fisheries. Blue sharks are not a source of squalene oil. |

Ausway phone operators were not able to tell this submission’s author if the oil was caught in Australia or was from blue sharks. E-mail enquiries went unanswered. Any future policy should be tested against this example.

**The risk of getting the labelling laws wrong:**

Allowing an increased amount of imported seafood products into the country by falsely stating that they are made in Australia would place the brand (mark) at risk.

It also places the Australian seafood consumer trust in Australian seafood in jeopardy. If consumers cannot trust complementary medicines that contain seafood, they may lose trust in the origin of all “Australian” seafood.

As explained, the Australian fishing industry is trade exposed and for this reason is particularly vulnerable. If implemented, allowing imported complimentary medicines containing seafood to be labelled as made in Australia, when they are not, may have devastating impacts on the Australian seafood manufacturing sector.

This sector has been growing in Australia since the 2017 law changes. There are significant start-up opportunities for Australian seafood complimentary medicines, and these must be protected.

**The cost of doing the right thing:**

We understand that Australia exported $936m of complimentary medicines in 2018. Although not stated in the consultation document this submission assumes that most of the $655m exported to China and Hong Kong were cases where product is imported as components (of particular relevance to this submission: packaging, marine oil and capsules) into Australia, assembled but not *substantially transformed*, and then exported back after very minimal cost and handling, labelled as made in Australia. Although financially tempting, Australia’s labelling laws should not mislead the Chinese people more so than the Australian people.

**The solution:**

In the first instance this submission would propose that complimentary medicines be labelled as per the 2017 food labelling regulations. We believe that the consumer expects this, and these new laws have been welcomed by the Australian community.

Given however that the consultation document sees these laws as a “problem” we propose a different way forward.

The risk lies in the detail of the Australian Consumer Law’s ‘Safe Harbours’. Because this submission originates from the fishing industry this submission is most interested in the ‘Made-in’ safe harbours described on p18 of the consultation document and specifically how these might apply to imported marine oils.

We urge the Department to strongly apply and police the *substantial transformation* test as is the present case following the ACCC and Federal Court rulings. We urge the Department to uphold that encapsulation is not *substantial transformation* as proposed on p19 of the document.

*Significant transformation* must be a physical change and not just an increase in value due to association with Australian or its brand. If a product touches down in Australia and is significantly increased in value by a made-in label this is not *substantial transformation*. This submission rejects the Complementary Medicines Australia (CMA) proposal that encapsulation in Australia meets the *substantial transformation* test (p25 of the document) due to the increased value that Australia’s food safety systems add.

With regard to complimentary medicines derived from seafood, the made in Australia mark means more than the food safety achieved by Australian encapsulation. The brand tells the consumer that the product is from a sustainable fishery and from fish that was landed in accordance with Australian food safety standards (i.e. freshness). The Australian fishing industry has spent more than 150 years building this trust and brand equity with the Australian consumer.

However, if an Australian manufacturing business imports ingredients and components and manufactures a product in Australia it may well pass this test and qualify for a made-in claim.

It is critical that the Made in Australia logo is only lent to products that pass one of the existing safe harbour tests and that this excludes imported oils that only undergo encapsulation in Australia.

1. This submission therefore represents ≈20% of Australia’s wildcatch production by volume [↑](#footnote-ref-1)