



SUBSTANTIAL TRANSFORMATION

Changes to ACL safe harbours

In February 2017 the safe harbour provisions of the *Australian Consumer Law* (ACL) relating to country of origin claims were amended.

The amendments for “made in” claims included removal of the 50% cost of production requirement and also a new definition of the concept of ‘substantial transformation’ (ST).

Under the amended law, companies can safely make a claim that a product is made in a particular country if the product has undergone its last substantial transformation in that country.

New definition of substantial transformation

The new definition of ‘substantial transformation’ is:

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.

The previous definition was:

Goods are substantially transformed in a country if they undergo a fundamental change in form, appearance or nature such that goods existing after the change are new and different goods from those existing before the change.

The Department of Industry has provided the following information about the change:

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.

The new definition is derived from internationally accepted texts, such as the WTO Agreement on Rules of Origin, the Codex Alimentarius Standard on the Labelling of Pre-packaged Foods and the International Convention on the Simplification and Harmonization of Customs procedures (known as the Kyoto Convention – a revised convention entered into force on 3 February 2006). The proposed definition also aligns with approaches from major trading partners such as NZ, the USA and the EU.

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