



Advocate for the Consumer, Cosmetic,
Hygiene and Specialty Products Industry

Mr Philip Weickhardt
Presiding Commissioner
Retail Industry Inquiry
Productivity Commission
GPO BOX 1428
Canberra City ACT 2601

Dear Mr Weickhardt

Productivity Commission Inquiry into the Economic Structure and Performance of the Australian Retail Industry

Accord Australasia (the national body for the hygiene, cosmetics and specialty products industry) is pleased to provide this response to the Commission's retail industry inquiry.

Our submission primarily covers emerging policy issues relating to compliance enforcement of Australia's regulatory requirements for formulated products which have been exacerbated by on-line and offshore retailing.

Background to our sector, retailing of our industry's products and scope of this submission

The formulated hygiene, cosmetic and specialty products industry is a significant industry sector contributing to a prosperous Australian economy. Our industry's products include household and commercial cleaning agents; disinfectants; make-up and beauty products; toiletries and personal care products; hair-care products; skincare products, including sunscreens; oral hygiene; fragrances and perfumes, feminine hygiene products; industrial and agricultural sanitisers; household pest control; and adhesives and sealants. Sector products play a vital role in:

- *Safeguarding public health*: Maintaining essential standards of hygiene and sanitation in institutions, hospitality, manufacturing and agriculture.
- *Promoting personal well-being*: Helping people keep clean, healthy and shielded from harmful effects of the environment.
- *Maintaining comfortable homes*: Enabling people to keep their everyday surroundings clean and inviting.
- *Enhancing quality of life*: Giving people greater personal freedom through time- and effort-saving technologies
- *Boosting confidence and emotional wellbeing*: Providing opportunities for self-expression, individuality and pampering.
- *Keeping the wheels of commerce and industry turning*: Fulfilling specialised uses in industry, institutions and agriculture.

Accord has around 94 member companies which range from smaller Australian-owned family businesses to the local operations of large consumer brand multinationals (Attachment 1 – member list). Headline features and statistics for our industry's economic footprint include:

- Estimated annual retail-level sales of industry products nudging the \$10 billion mark
- Accord member companies directly contribute more than 14,000 full-time equivalent jobs
- Nationally more than 170 offices and more than 50 manufacturing sites are operated by Accord member companies
- Our sector is highly regulated with a recent internal Accord survey of members showing that:
 - 97 percent have dealings with the National Industrial Chemicals Notification & Assessment Scheme (NICNAS),
 - 77 percent with the Therapeutic Goods Administration (TGA),
 - 58 percent with the Australian Quarantine Inspection Service (AQIS),
 - 39 percent with the Australian Pesticides & Veterinary Medicines Authority (APVMA); and,
 - 33 percent with Food Safety Australia New Zealand (FSANZ).

In essence there are three distinct product segments for our industry, each with distinct supply chains through to the product end user:

- Industrial and Institutional products (e.g. commercial cleaning products, agricultural sanitisers) which are mainly sold on a business-to-business or business-to-government basis or through agricultural product resellers. *This segment is outside the scope of the PC Inquiry.*
- Fast-moving consumer goods (e.g. household cleaners, laundry detergents, toothpaste, shampoo, soap) which are sold to consumers primarily via either: grocery retailers, pharmacies, mass-market retailers, direct selling and hardware chains.
- Cosmetic and beauty industry products (e.g. make-up, skincare, sunscreens, fragrances, hairdyes) which are sold to consumers primarily via either: department stores, specialty retailers, grocery retailers, pharmacies, mass-market retailers, direct selling, hair salons, beauty salons, spas and on-line.

These last two segments are of relevance to this Inquiry as they are suppliers of products to retailers and are impacted both directly and indirectly by the economic performance and structure of the retail industry. The commercial relationship between suppliers and retailers is complex and symbiotic. It is strictly governed by the rules laid out in Australia's competition law regime administered by the ACCC. (As an industry body Accord is mindful of legal obligations under competition law and has formal policies in place.)

This submission will focus on specific issues relating to other regulatory regimes and rules that impact on the retail supply of formulated hygiene and cosmetic products to consumers, rather than the complex commercial dynamics of the retail supply chain. As such, this submission primarily relates to matters outlined on pages 18-19 (consumer protection) and page 36-37 (other regulatory burdens) of the Commission's Issues Paper. Additionally, some comments will be made in relation to the current GST exemption for low-value importation.

It should also be noted that a small number of Accord's members fulfill a dual role as both makers of products and as retailers of these products in their own right. These are the companies that have adopted a direct selling product distribution model. Companies using this approach contract sales representatives to sell their products directly to the public.

Accord's submission will address specific problems arising from the simple fact that formulated products are not the same as clothes, books, and many other retail items.

Regulation of formulated products and the problem of unique Australian regulatory requirements

The regulation of formulated hygiene, cosmetic and speciality products was subject to intensive scrutiny in the Commission's research study on chemicals and plastics regulation which reported to the Government in August 2008. In releasing this report the presiding Commissioner said: "*While the regulatory framework has been reasonably effective in achieving public health, workplace safety, environment protection and national security goals, there are many inefficiencies.*"

Accord has long argued for reform to improve Australia's overly complex and fragmented system of formulated product regulation and to remove unjustified unique Australian regulatory requirements that are out of step with other advanced economies (such as the EU, Canada and the USA) and thereby act as a barrier to trade. Our industry strongly supports essential regulation for consumer safety, public health and the protection of the workers and the environment. However, we believe this must be a *minimum effective level of regulation* that is efficient, is simpler so that it encourages greater compliance and is aligned with international practice. Unfortunately Accord notes that despite the Commission's 2008 report providing the Government with a considered and achievable 'road map' for policy reform, and despite the establishment of a COAG Standing Committee on Chemicals to oversee this reform agenda, there has been very little in the way of significant tangible progress in streamlining the regulation of formulated products.

This lack of action is now having a material effect, not only in terms of generally holding back investment and innovation in our sector, but also in specifically creating a 'less level playing field' that is unfairly favouring product supply via emerging retail channels, such as online purchase from overseas-based retailers, compared to traditional local retailing.

This results from the fact that Accord member companies take great effort to comply with existing Australian requirements in terms of their product formulations and labels. Such compliance is costly. And also frustrating, when it often means that a formulation already shown to be safe and effective in advanced markets like the EU, Canada or the USA must be re-formulated to comply with local Australian regulations.

Ethical and compliant formulated product manufacturers and suppliers are bearing the costs of these requirements. Against this, and increasingly, non-compliant products are either:

- being purchased via the internet from offshore retailers, or;
- are entering the retail supply chain within Australia as parallel imports.

Accord notes that Australian law allows the parallel importing of formulated products. But that this policy assumes that only those products that meet Australian regulatory requirements will actually be brought into Australia.

The assumption here is two-fold. Firstly, that the importer will check that the product's formulation and label comply. And should this not be the case, they would then either make the necessary changes to the product (e.g. over-sticker the label to include information required by Australian law) or not supply the product (e.g. if the product formulation includes an ingredient that is not listed on the Australian Inventory of Chemical Substances). Secondly, that the governments which sought to impose unique Australian requirements on these products in the first place undertake the necessary levels of compliance monitoring and enforcement action to ensure that non-compliant products are not made available to the public. It is doubted that these assumptions in fact reflect the reality. (In fact, Accord can provide the Commission with specific examples, subject to maintenance of confidentiality for the affected companies.)

In the case of direct on-line purchase by individual Australian consumers, it is difficult to imagine such checking for compliance occurring. The consumer would, quite correctly, assume that the

product on offer is safe and effective, especially if a name brand product sold to them by a retailer with a reputation for reliability that is based in an advanced nation. The offshore retailer would likewise assume that as the product is allowed to be sold in the country where they are based, it complies with fundamental safety and consumer requirements. But, as noted earlier, Australian laws treat formulated hygiene and cosmetic products differently to other retail products like clothes, shoes, books and household items.

The following is a list of just some of the unique Australian regulatory requirements relating to our industry's products:

- Ingredients in formulated products sold in Australia must be on the Australian Inventory of Chemical Substances (AICS) or else they are treated as 'new chemicals' requiring full safety assessment (the AICS has approximately 38,000 substances listed; while the US inventory has approximately 83,000)
- Assessment of polymer ingredients of 'low concern' as new chemicals, unless already on the AICS
- Prescriptive rules that net contents must appear on the front of pack (other nations are more flexible and this often means that products need to be over-stickered)
- Full cost-recovery for regulatory agencies (e.g. NICNAS, TGA, APVMA)
- Pre- and post-market regulatory intervention for formulated products (other nation's generally have one or the other, not both)
- Primary sunscreens treated as 'medicines' and subject to TGA 's':
 - labelling,
 - good manufacturing practice (GMP)
 - excipient testing, and;
 - requirement for ANN (Australian Approved Name) rather than INCI (International Nomenclature Cosmetic Ingredient) names on labels.
- 50+ SPF sunscreens not allowed in Australia (this will change in the next year, though)
- 'Dangerous Goods' diamond 'inner package' labelling
- Annual reporting by all product introducers to NICNAS of low volumes of non-hazardous chemicals

In comparison to this approach, New Zealand has adopted a much more flexible and open approach for dealing with low-risk categories of formulated products. For example, it has initiated deemed-to-comply provisions for formulated product labels that meet EU, US or Canadian requirements. In essence, this puts into practice, across the entire supply chain, what would be happening in many cases of on-line purchase by Australian consumers of cosmetics from offshore retailers in the EU or the USA. Such an approach removes inefficiencies and ensures regulatory effort can be targeted at areas of highest risk.

As a further example of distortions occurring presently within the Australian market Accord is aware of situation in which a brand company (the company does not wish to be named in this submission) had until recently – because of local labelling and compliance cost hurdles – decided not to satisfy local demand for a product that has had good consumer take-up overseas. As a result the brand company had resigned itself to another lost sales opportunity within the Australian market. However, in this case, a parallel importer unrelated to the local company operation, introduced the product into the Australian market, despite the fact that its label is non-compliant with Australian labelling laws. The brand company has attempted, unsuccessfully, to get the relevant state department to enforce compliance against the importer. Apparently, the matter is not of sufficient priority for the state department involved to act. More recently, the brand company has introduced a locally-labelled version of the product, bearing the costs of ensuring its compliance with Australian regulations. However, the parallel importer is still introducing product onto the market that has non-compliant labelling.

So what are these examples telling us? Well clearly, if we maintain the *status quo* of having unique Australian requirements that are not universally enforced, the ethical makers, suppliers and retailers of formulated products will be disadvantaged compared to either:

- others who are disregarding the Australian formulated products regulations and introducing non-compliant products either deliberately or in ignorance, or;
- direct online purchasing by Australian consumers of non-compliant products.

So what are the options?

Well firstly the key question that has to be asked is: *Are these many unique Australian requirements for formulated products essential in the first place?* Essential laws and rules clearly warrant strong compliance monitoring and enforcement. Anything else would be an abrogation of responsibility by governments. However, the fact that this is not always occurring, indicates that many of these requirements are not at all essential to the protection of public safety. This is doubly reinforced by the fact that direct on-line purchase by Australian consumers appears to fall outside the policy scope of these rules and their enforcement.

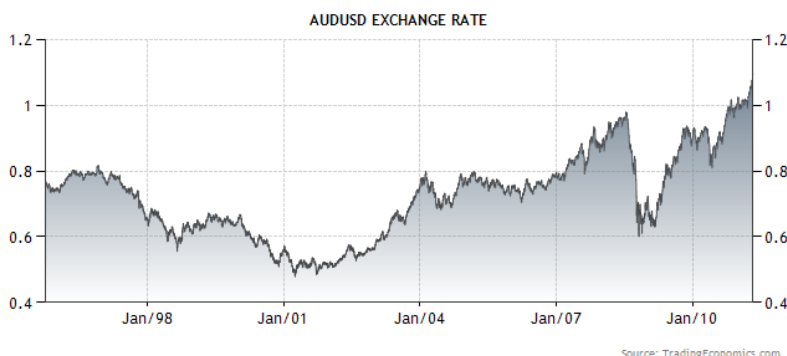
The Government has to choose between two policy pathways here. It either re-states that these many unique Australian requirements are essential and that it will commit the resources and energy needed to enforce them for all formulated products entering the Australian market, via any retail channel. Or instead, the Government continues the process, commenced by COAG, of streamlining the existing overly-complex and fragmented regulatory system, and give additional priority to removing all unnecessary unique Australian regulatory requirements impacting on formulated hygiene, cosmetic and speciality products.

Failure to pursue either of these policy pathways will continue to see the regulatory environment and compliance cost burden unfairly tilted against ethical and compliant makers, suppliers and retailers of formulated products.

This is an important matter and Accord would welcome an opportunity to facilitate the Inquiry hearing directly from our member companies about their experiences.

Some comments on the low-value importation threshold for GST and import duty

It is noted that the Commission’s Issues Paper reports on thresholds employed in other countries. And that this indicates that most other countries have thresholds set at levels much lower than Australia’s. It would appear that there may be an opportunity to align Australia’s threshold more closely to international practice. The \$1000 threshold has been in place since October 2005 and for most of this period this level equated to around \$750-780US (see graph below). *(A more mathematical analysis than just visual scanning would be able to determine a time weighted average, mean and median for this period.)*



In terms of the exchange rate of more recent times the threshold equates to approximately \$1070. This represents a serious increase in its 'buying value' that would also apply to some other currencies such as the pound.

The Government needs to consider what this means in light of many predictions that the \$AUD's value will continue to increase (notwithstanding the vagaries and volatility of currency exchange rates).

Another trend has been the general fall in price of many major household consumer items, such as TVs, which also in a way equates to increasing the 'buying value' of the threshold.

These trends highlight that the value could be recalibrated to better reflect the 'buying value' it represented when first introduced and to bring it into better alignment with international practice.

Accord is a member of the Australian Chamber of Commerce and Industry (ACCI), and endorses ACCI's policy principles in relation to the Australian taxation system. A key one of these is "*Limit costs – compliance and collection costs should be minimised*". It is recognised that there is a point at which the effort and expense of collecting GST revenue from low-value imports may actually exceed the revenue raised. As a result it is not in the national interest to remove the threshold altogether or to set it too low. It would be helpful if input into the Inquiry from Customs or the ATO could be used to estimate the level at which collection costs exceed revenue.

Accord welcomes this chance to provide input to the Commission's Retail Inquiry and would welcome further opportunities to provide member company input that illustrates more tangibly the issues we have raised.

Should you require any additional information about the matters addressed please contact either myself or Accord's Executive Director Bronwyn Capanna on 02 9281 2322

Yours sincerely

<Unsigned for electronic submission>

Craig Brock
Director, Policy & Public Affairs

24 May 2010

Members

Consumer, Cosmetic and Personal Care

Advanced Skin Technology Pty Ltd
Alberto Culver Australia
Amway of Australia Pty Ltd
Apisant Pty Ltd
AVON Products Pty Limited
Beautiworx Australia Pty Ltd
Beiersdorf Australia Ltd
BrandPoint Pty Ltd
Chanel Australia
Clorox Australia Pty Ltd
Colgate-Palmolive Pty Ltd
Combe Asia-Pacific Pty Ltd
Cosmax Prestige Brands Australia Pty Ltd
Coty Australia Pty Limited
De Lorenzo Hair & Cosmetic Research Pty Ltd
Elizabeth Arden Australia
Emeis Cosmetics Pty Ltd
Energizer Australia Pty Ltd
Estée Lauder Australia
Frostbland Pty Ltd
GlaxoSmithKline Consumer Healthcare
Helios Health & Beauty Pty Ltd
Johnson & Johnson Pacific
Kao (Australia) Marketing Pty Ltd
Kao Brands Australia Pty Ltd
Keune Australia
Kimberly Clark Australia
KPSS Australia Pty Ltd
La Biosthetique Australia
La Prairie Group
L'Oreal Australia Pty Ltd
LVMH Perfumes and Cosmetics
Mary Kay Cosmetics Pty Ltd
Natural Australian Kulture Pty Ltd
Nutrimetics Australia
NYX Pty Ltd
Procter & Gamble Australia Pty Ltd
PZ Cussons Australia Pty Ltd
Reckitt Benckiser
Revlon Australia
Sabre Corporation Pty Ltd
Scental Pacific Pty Ltd
Shiseido (Australia) Pty Ltd
The Heat Group Pty Ltd
The Purist Company Pty Ltd
Three Six Five Pty Ltd
Trimex Pty Ltd
True Solutions International Pty Limited
Ultraceuticals
Unilever Australasia
Weleda Australia Pty Ltd

Hygiene and Specialty Products

Albright & Wilson (Aust) Ltd
Applied Australia Pty Ltd
BP Castrol Australia Pty Ltd
Callington Haven Pty Ltd
Campbell Brothers Limited
Castle Chemicals Pty Ltd
Chemetall (Australasia) Pty Ltd
Clariant (Australia) Pty Ltd
Cleveland Cleaning Supplies Pty Ltd
Deb Australia Pty Ltd
Dominant (Australia) Pty Ltd
Ecolab Pty Limited
Huntsman Corporation Australia Pty Ltd
Jalco Group Pty Limited
Lab 6 Pty Ltd
Novozymes Australia Pty Ltd
Nowra Chemical Manufacturers Pty Ltd
Peerless JAL Pty Ltd
Recochem Inc
Rohm and Haas Australia Pty Ltd
Solvay Interox Pty Ltd
Sonitron Australasia Pty Ltd
Sopura Australia Pty Ltd
Tasman Chemicals Pty Ltd
Thor Specialties Pty Limited
True Blue Chemicals Pty Ltd
Univar Australia Pty Ltd
Whiteley Corporation Pty Ltd

Associate Members

Equipment and Packaging Suppliers

HydroNova Australia NZ Pty Ltd
Megara (Aust.) Pty Ltd
SCHÜTZ DSL (Australia) Pty Ltd

Graphic Design and Creative

Ident Pty Ltd

Legal and Business Management

FCB Lawyers
KPMG
TressCox Lawyers

Regulatory and Technical Consultants

Archer Emery & Associates
Clare Martin & Associates Pty Ltd
Competitive Advantage
Engel Hellyer & Partners Pty Ltd
Robert Forbes & Associates
Sue Akeroyd & Associates
Toxikos Pty Ltd

Specialist Laboratories and Testing

ams Laboratories
Dermatest Pty Ltd
Silliker Australia Pty Ltd

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