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## News

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### Court decision hits exports 4.12.18

Posted 4 December 2018

**The Federal Court has ruled that imported products made into capsules in Australia is not enough for them to be labelled 'Made in Australia'.**

The judgement, which came late yesterday (Monday), is potentially pivotal for complementary medicine manufacturers - including pharma companies such as Sanofi and Pfizer.

The 'Made in Australia' logo is a key marketing element for many territories, particularly China, with some estimates that complementary medicines have an export value of \$5 billion per year.

Complementary Medicines Australia (CMA) CEO Carl Gibson said the government needed to act immediately to protect the billion export market which was now under threat.

"We are one of the few manufacturing sectors in the country actually growing - and yet Australia is about to shoot itself in the foot and give away our competitive export advantage," he said, saying the case outcome underlined "how Australian companies are being negatively impacted by the new ACCC guidelines".

Those new guidelines, introduced by the Australian Consumer and Competition Commission (ACCC) earlier this year, were tested in the court case between Nature's Way and the Australian Made Campaign with the ACCC as "intervener".

Chinese-owned Nature's Way had applied to renew its licence from Australian Made Campaign Ltd (AMCL) for its Fish Oil 1000+Vitamin D3 capsules but the AMCL rejected the application because it didn't line up with the ACCC's new guidelines on what can be described as Made in Australia.

Justice Nye Perram yesterday ruled the imported fish oil and vitamin D ingredients had not been "substantially transformed" when locally made into fish oil tablets.

Perram quoted the relevant legislation that "as a result of one or more processes undertaken in [Australia], the goods are fundamentally different in identity, nature or essential character from all of their ingredients or components that were imported" to qualify for Australian-made status.

He said "the ACCC publicly indicated in March 2018 that it does not accept that the encapsulation of imported substances fell within the... provisions".

With Perram supporting the ACCC view, Nature's Way will lose its licence to use the Australian Made logo from year's end.

ACCC deputy chair Mick Keogh said it was "pleased that the approach of the Federal Court is consistent with the guidance the ACCC has given industry about country of origin labeling".

The CMA, Australian Self Medication Industry (ASMI) and a variety of state and [federal politicians have all warned](#) the introduction of the higher bar for what constitutes 'Made in Australia' could sound a death knell for much of the Australian medicines export market.

Sanofi, which is reputed to have close to \$1 billion in complementary medicine exports, is understood to be going over the decision with its legal team.

**David Rowley**

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