

**SUBMISSION TO THE JOINT COMMITTEE OF PUBLIC  
ACCOUNTS AND AUDIT**

**REVIEW OF AUSTRALIA'S QUARANTINE FUNCTION**

**BY**

**DIAGEO AUSTRALIA LTD**

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## EXECUTIVE SUMMARY

Diageo Australia Ltd (DIAGEO) is pleased to be able to make a submission to the JCPAA in relation to the efficiency and effectiveness of Australia's quarantine function.

Our submission is based upon the Terms of Reference of the JCPAA's inquiry, but will focus on what we consider to be the adverse impact upon our industry from what is perceived as a lack of comprehension by the Australian Quarantine Inspection Services (AQIS), and its counterparts in border control, of our products, the different operations of our market (ie duty free, domestic retail) and our industry. In particular, policy and administration seems to be set, and be conducted with little appreciation of the following:

- Spirituous beverages do not carry pests and diseases, yet compliance with food control legislation is significant;
- The health issues surrounding spirituous beverages are related not to the product bearing any disease or illness, but to the behaviour of the consumer. We question whether this is the role of AQIS at the border, or a role for another agency;
- The premium products and brands of the industry are global products and brands, and are being imported continually, and in large volumes, into every international market;
- Spirituous beverages are heavily taxed in most markets, and non-tariff trade barriers into markets such as Australia, are often critical to the viability and profitability of a product and brand;
- The industry globally differentiates between "domestic consumption" and "duty free consumption", and is structured along these lines; and
- Owing to the value of Intellectual Property (IP) of our brands, and the value of rights to that IP, many brands are targets of the parallel traders and counterfeiters, which create both commercial risks for the industry, and food control risks to the relevant authorities.

Diageo shares the same concerns for the protection of Australia from the exotic pests and diseases that this country is currently free from, such as "Foot & Mouth", but often considers whether this objective is best met with the current levels of attention paid to the imports of spirituous products. Our industry is disease and pest free, yet subject to comprehensive checks for relatively minor label infringements of the *Import Food Control Act* that would seem to detract from the "main game" of AQIS, i.e., protection against exotic pests and diseases.

Diageo does support the enforcement by AQIS of unscrupulous importers looking to by-pass Australian food standard codes for labelling, as this maintains the integrity of the spirits market for consumers, and justifies the additional compliance costs for distributors in readying a product for the specific requirements of the Australian market. However, if this is indeed a focus of AQIS, then risk treatments need to apply consistently and equally amongst all importers of spirit. In this submission we would like to highlight some of these inconsistencies.

Finally, AQIS needs a firmer understanding of our industry prior to making any future policy and administrative changes in the area of food control legislation. A simple or minor adjustment to a labelling requirement for example, can cost each importer considerable amounts to comply. Again, we would like to use this submission to demonstrate how a simple change in policy, questionable in value, will cost significant sums for Diageo in order to become compliant.

## Diageo Australia Limited

Diageo Australia Ltd, as part of the Diageo plc group of companies, is one of the world's leading distributors of spirits and other alcoholic beverages. Until recently, Diageo Australia Ltd was known as Guinness United Distillers & Vintners (Australia) Limited, taking the name of its parent company from 1 July this year.

The creation of Diageo plc was a strategic breakthrough in the beer, spirits and wine industries, bringing together leading international brands in most categories of alcohol with a strong presence across all regions of the world. The company has access to customers in more than 180 countries, and maintains a high quality, consumer-focused management philosophy.

Diageo's product range includes 19 of the world's top 100 premium spirit brands. Through its Australian subsidiary, Diageo, has a 30% share of the local market. We bring a full product range to the marketplace, and have leading international brands in most categories, including:

Baileys Irish Cream	Bells (scotch whisky)
Bundaberg Rum (rum)	Cardhu (malt whisky)
Cossack (vodka)	Craganmore (malt whisky)
Dalwhinnie (malt whisky)	Dimple (scotch whisky)
George Dickel (Tennessee whisky)	Gilbeys (gin)
Glenkinchee (malt whisky)	Gordons (gin)
Guinness (stout)	Hennessy Cognac
J & B (scotch whisky)	Johnnie Walker (scotch)
Kilkenny (beer)	Lagavaulin (malt whisky)
Oban (malt whisky)	Pimms No 1
Real McCoy (bourbon)	Smirnoff (vodka)
Stolichnaya (vodka)	Stolichnaya Lemon Ruski
Talisker (12 yo single malt whisky)	Tanqueray English (gin)
UDL (pre-mixed spirits in cans)	Vat 69 (scotch whisky)
Vickers (gin)	

Diageo imports both packaged spirits and liqueurs, as well as bulk spirits. Bulk spirits are subsequently reduced and packaged at Diageo's Huntingwood premises. Huntingwood is a licensed Customs warehouse for such operations. Diageo is also a local spirit maker after acquiring the Bundaberg Distilling Company.

Diageo's six core brands in the Australian spirits market are Johnnie Walker Scotch Whisky, Bundaberg Rum, Baileys Irish Cream, Smirnoff Vodka, UDL (ready to drink beverages), and Guinness stout Beer, which represent a total 30% market share in Australia. In the ready to drink category, Diageo has three of its drinks among the top five brands.

## **INTERACTION BETWEEN DIAGEO AUSTRALIA LTD AND THE AUSTRALIAN QUARANTINE INSPECTION SERVICE**

As an importer of beverages, Diageo is subject to the relevant provisions of the *Imported Food Controls Act 1992* and the *Imported Food Regulations 1993*. Classified as a “random surveillance food”, 5% (or 1 in 20) of Diageo’s alcohol consignments must be referred by Customs to AQIS for inspection.

The process operates off the import entries Diageo makes through its Broker to Customs at the time of importation. Each import entry contains a tariff code relating to the product being imported, which matches with the tariff codes held by Customs of all goods subject to the imported food control legislation.

This level of compliance represents a commercial cost to Diageo’s Australian operations, and this is in the context of what is considered a “disease free” product imported by an importer with the highest standards of compliance. Diageo queries whether AQIS is efficiently managing risk, not only at the imported spirits industry level, but whether the focus on importers of integrity in a low risk industry best meets AQIS’ overall risk management of Australia’s imported food.

# COMMERCIAL IMPACTS OF QUARANTINE ADMINISTRATION

Against the Terms of Reference for this inquiry, following are a number of specific areas in which Diageo raises concerns. Each relate to the application by AQIS of the *Imported Food Control Act 1992*, and the *Imported Food Control Regulations 1993* in the context of imported spirits, and highlight the need for what believe to be a more relevant approach from the organisation.

## 4.1 Imported Food Control Act and the Duty Free Market

Imported food legislation applies controls over the labelling requirements for imported spirits. These labelling requirements are set by the Australian New Zealand Food Authority (ANZFA), and are designed to protect Australian consumers by identifying aspects such as importers local name and address, product origin, package size, spirit strength, and the number of standard drinks.

Certain exemptions to the *Imported Food Control Act* are prescribed; these include spirits intended as ships stores (as defined in the *Customs Act*) and private imports by individuals. The exemptions do not specifically prescribe duty free sales, however duty free labels have been not subject to AQIS scrutiny in the past, and perhaps did not require the same level of scrutiny as imported spirits.

Put simply, duty free spirits are placed in a bonded warehouse by Diageo (and all other distributors) until either:

- They are sold under bond to a duty free company for subsequent re-export by a departing passenger at an outwards duty free shop;
- They are sold under bond to a duty free company for subsequent sale to an arriving passenger at an inwards duty free shop, who will then make a small private import;
- They are sold under bond to a Providore as ship or aircraft stores (with the meaning of the *Customs Act*); or
- Are re-exported to other regional markets serviced by the distributor eg Fiji, New Guinea, Vanuatu, etc

Each category of sale in itself could conceivably be a category of food exempt from the provisions of the *Imported Food Control Act*.

Until now, AQIS have adopted a common sense approach to this situation, and have not applied controls to duty free sales. For reasons unknown, AQIS have made an administrative decision to commence applying controls to duty free product labels, and in this “stroke of a pen” will cause undue

financial harm to the industry. This new measure is due to commence on 1 August 2002.

Diageo imports products for both the Australian domestic market, and the duty free market. Whilst the brands are the same, the actual products for each market differ in terms of labelling, packaging and marketing. Globally, distribution of brands is also structured in the same way, ie duty free distribution being distinctly separate from domestic market distribution. Each major distributor has a duty free division of operations to manage the global supply and sale of their brands.

Duty free product is generally packaged in larger sizes, and aimed at internationally recognised passenger duty free concessions for alcohol. Duty free products possess generic labelling, aimed at giving the consumer details as to the manufacturer, size, alcohol strength and origin, with generic labelling allowing the same product to be sold in duty free shops all over the world. Commercial savings are significant given that domestic markets often have specific labelling needs and thus generic packaging/labelling is not an option for this type of distribution.

With the decision to apply Australian retail labelling standards to duty free products that will never be retailed in the Australian domestic market, AQIS has effectively undermined the effectiveness of the global distribution of duty free products, and added significantly to the cost of complying with local regulations. At the time of this submission, the exact cost to Diageo is still being calculated, but additional compliance costs are expected to reach \$1 million.

Given this decision, the industry approached ANZFA for an amendment to the relevant food codes covering labelling requirements that would specifically exempt duty free sales from such requirements. Having initially recommended such an amendment in its preliminary assessments, ANZFA recently reversed the recommendation and decided to leave the food codes unchanged. It decided that it was preferable to “do nothing” in the context of an inconclusive debate between the industry, and the health lobby who thought that “lack of standard drinks” information on labels would lead to major public health issues. This is notwithstanding that all products carry information on alcohol strength.

Diageo now asks the JCPAA, what is the risk to the Australian public from current labelling of duty free spirituous products? Why is this quarantine risk different from spirits imported for ships stores, and private imports of spirits by individuals, which are exempt from the *Imported Food Control Act*.

#### **4.2 AQIS and Non-tariff Trade Barriers**

Diageo is part of a large global distribution business that imports into all WTO member markets. Outside of excise equivalent duties applied by customs to



imports of spirit, quarantine requirements are considered as having the most potential non-tariff barriers to international trade. Whilst Diageo is not saying that current AQIS controls are “barriers” to trade, the change described above, to impose Australian domestic retail labelling requirements to duty free sales, could be considered questionable in respect of the articles of the relevant WTO member agreements. Diageo would not want this current situation to be a precedent for other AQIS policy and/or administrative changes, in that WTO obligations can be overlooked in any change of practice.

Diageo cites the WTO’s *“Agreement on Technical Barriers to Trade”* in which members desire:

*“to ensure that technical regulations and standards, including packaging, marking, and **labelling requirements**, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade”*

Article 2 of the agreement provides for “legitimate objectives” by individual members to so impose regulations contrary to the desires of the agreement. These objectives include:

*“...national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment...”*

In determining whether such risks exist, members must have scientific and technical data to support the objective, and subsequently, Article 2 also provides for a process through the WTO to enact such restrictive measures.

Diageo again asks the JCPAA to determine what process AQIS and the Government undertook with the WTO, prior to undertaking this change of application / interpretation of the *Imported Food Control Act*.

#### **4.3 Inconsistencies in AQIS administration of labelling controls**

Having discussed labelling requirement concerns for duty free sales, Diageo is still supportive of enforcement of the food code requirements for imported spirits destined for the Australian retail market if this continues to be a priority for AQIS. Enforcement will maintain a degree of integrity of the local spirits market, indeed a priority for Diageo and the legitimate industry players.

However, Diageo is receiving mixed messages in this regard. Despite stopping 1 in 20 of all Diageo imports for primarily labelling inspection, Diageo is aware of products in the domestic market place that fail the relevant food standard codes, particularly in the area of labelling. These are often the

smaller or infrequent spirits importers, who for some reason do not appear to have the same stringent level of control as applied by AQIS, as is applied to Diageo.

Further, Diageo has on occasions brought to the attention of AQIS, examples of importers failing labelling requirements. What has been frustrating is that these goods are usually still under customs control, and have not yet reached the market place. On such occasions, there has been little in terms of adequate follow up risk treatments.

The parallel trade in premium brand spirits is very active both into and out of Australia. Whilst the Government fails to regulate against the practice, the parallel trade will continue unabated, and the consequence of a failure to regulate is the importation of spirituous products that were destined, and therefore labelled, for other markets and whose labelling fails Australian standards. AQIS will need to begin applying more effective controls in this regard, if it is serious in taking a strong stand in relation to the labels applied to spirits imported for duty free sale, and by importers with long histories of sound compliance such as Diageo.

Indeed, Diageo has an issue with AQIS at present in relation to a consignment of Baileys Irish Cream, parallel imported last Christmas. The actual import was identified and referred to Diageo by Customs whose anti-counterfeiting controls are working, with Baileys a protected Trade Mark in Australia. Upon inspection by Diageo, it was found that the consignment was genuine and not counterfeit, but had been "parallel" imported into Australia to by-pass existing licensing arrangements for Bailey's and as such Customs had no further powers to assist.

However, as the product had been destined for a particular European market, the labelling complied with the food standard codes for that market, and not with the Australian food standards, eg no information as to standard drinks, no importer's name and local address. Diageo brought this to the attention of AQIS whose officers assured us that no product would enter Australia that failed labelling standards.

Despite the AQIS assurances, the product entered the market place without compliant labels. There is further commercial risk to Diageo by this AQIS failure in that had the unlicensed importer put "out of date" Bailey's into the market place, without local name and address details on the label, the relevant health authorities, or consumer groups, may have turned their attention to Diageo as the "known" distributor of Bailey's in Australia. This of course even though they had not put the offending products into the market.

Diageo would like to see the JCPAA recommend the AQIS develop a relevant position on labelling infringements, and then apply a consistent compliance approach across the imported spirits industry.

## 5. CONTACTS FOR THIS SUBMISSION

Diageo is only to happy to assist the JCPAA with any particular queries arising from the issues raised in this submission, and it should make contact with us as the need arises. In this regard, the JCPAA should in the first instance contact our advisors in these matters, being either:

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## 6. REFERENCES

1. National Competition Policy Review of the *Imported Food Control Act 1992*
2. *Imported Food Control Act 1992*
3. *Imported Food Control Regulations 1993*
4. ANAO Audit Report 47, 2000 “Managing for Quarantine Effectiveness”
5. Agreement On Technical Barriers to Trade (WTO 1996)