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Mr Craig Thompson MP
Chair
House of Representatives Standing Committee on Economics
PO Box 6021
Parliament House
Canberra ACT 2600
Australia

RE: Inquiry into *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010*

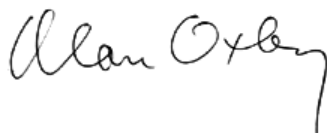
Dear Mr Thompson MP,

World Growth wishes to make a submission to the Australian House of Representatives Standing Committee on Economics inquiry into the *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010*.

World Growth wishes draw the Committee's attention to a submission from World Growth made to the Senate Community Affairs Legislation Committee on this Bill during the 42nd Australian Parliament.

In addition to this submission, World Growth wishes to make a supplementary submission regarding the trade law and foreign affairs implications of this Bill.

Yours sincerely



Alan Oxley
Chairman, World Growth

World Growth submission to House of Representatives Economics Committee on *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010*

World Growth has previously made a submission to the Senate Community Affairs Legislation Committee regarding the *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010*.

This submission focussed on the erroneous and misleading statistics used by proponents of Bill. In particular, the submission provided authoritative statistics to dispel the claim that oil palm cultivation is a leading cause of deforestation in South-East Asia or is the primary threat to the Orang-utan. The submission also focussed on lack of justification on health grounds for the mandatory labelling of palm oil.

The palm oil industry is extremely important for economic development in Malaysia and Indonesia. The Malaysian Government has used the palm oil industry for decades to improve the standard of living of the poorest. This tactic has been highly successful and evidence has shown that oil palm plantations have been the most successful measure at reducing poverty in Malaysia.

Since the 1960s the Malaysian Government and the Federal Land Development Authority (FELDA) has used palm oil as a highly successful poverty alleviation tool. In just 10 years between 1970 and 1980, poverty levels amongst oil palm smallholders in Malaysia fell from over 30 per cent to 8 per cent – the lowest incidence of poverty in any Malaysian agricultural sector. Poverty levels amongst subsistence farmers including paddy farmers was at 73 per cent at the same time.

In addition to this submission, World Growth wishes to make a supplementary submission focussing on the trade law and foreign relations implications of the Bill. In particular, World Growth's submission to the House of Representatives Standing Committee on Economics will focus on the Bill's potential to breach Australia's obligations under the World Trade Organisation and the ASEAN Australia New Zealand Free Trade Agreement and the damage to Australia's standing in the ASEAN region.

Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010

World Growth made a submission to the Senate Community Affairs Committee in the 42nd Australian Parliament regarding the *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010*. A significant part of this submission was a legal opinion commissioned by World Growth from Associate Professor, Andrew Mitchell, University of Melbourne Law School and Elizabeth Sheargold, Researcher, University of Melbourne Law School.

This opinion reviewed the impact of the Bill on Australia's obligations under the World Trade Organisation and concluded that the legislation was likely to breach article 2.2 of the Technical Barriers to Trade Agreement and Article III:4 of the General Agreement on Tariffs and Trade.

The legal analysis found that the legislation was "more trade restrictive than necessary" and did not "materially contribute" to solving the declared environmental problem.

Developments in Trade Law

The recent determination of the dispute between Mexico and the United States termed the 'Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products' dispute has been found against the United States and in favour of Mexico. The case involved a Mexican complaint against a United States food labelling rule which refused to label imported Mexican Tuna as 'dolphin-safe', despite compliance by Mexican fishermen with all relevant international standards. Mexico argued that even though this labelling law was voluntary, the impact of the labelling standard was to limit the ability of Mexican Tuna to be sold in the United States Market.

The interim report from the Dispute Settlement Panel found in May 2011 that the U.S. measures at issue were more trade-restrictive than necessary to meet the aim of protecting dolphins from tuna fishermen.

This case has reconfirmed the general principle that when regulations purportedly seek to support environmental goals and achieve this end by restricting trade, they are disallowed under the WTO rules.

AANZFTA

The ASEAN Australia New Zealand Free Trade Agreement was signed in 2009. At that stage, Australia's two-way trade with the ASEAN region was worth \$80 billion a year, with around 18,500 Australian exporters doing business in ASEAN countries.

The AANZFTA sets a number of standards to reduce trade barriers between the AANZ nations, including provisions which guarantee imported goods receive the same treatment as nationally produced goods (national treatment) and that there will be no restriction of trade between nations, as defined under the WTO.

Article 4 of the AANZFTA states that "each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994. To this end, Article III of GATT 1994 shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*."

Article 7.1 of the AANZFTA states that "no Party shall adopt or maintain any prohibition or quantitative restriction on the importation of any good of any other Party or on the exportation of any good destined for the territory of any other Party, except in accordance with its WTO rights and obligations or this Agreement."

From the foregoing it is clear that the proposed legislation is likely to be in breach of both Articles 4 and 7.1 of the FTA and would not be saved by the exceptions contained in Article 1.1 of Chapter 15. The grounds for a breach of these Articles would be the same grounds as discussed in the legal opinion of Associate Professor Andrew Mitchell on consistency with WTO law.

Australia's role in the ASEAN region

Australia has traditionally taken a leadership role to support and foster economic growth in the ASEAN region. ASEAN is one of Australia's largest and most important trading partners.

At the recent 2011 ASEAN summit, the agenda of economic integration and regional connectivity among members of ASEAN and Australia was particularly topical.

Passage of the *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010* would also undermine Australia's credibility and capacity to encourage neighbouring nations to reduce trade barriers and open markets.

Australia is regarded as a responsible participant in the global economy. This derives from its consistent pursuit of sound economic management and advocacy of an open global economy.

Australia negotiated the free trade agreement with ASEAN and is working on bilateral free trade agreements with Indonesia and Malaysia. Adoption of measures like the palm oil labelling bill would undermine Australia's position and authority in the Southeast Asian region.

Poor Public Policy

The *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010* mandates government intervention in an area which has previously been left to individual consumer choice and corporate social responsibility policies. This sets a dangerous precedent for government intervention into the market place.

This is particularly the case in relation to the *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010*, which seeks to make a judgement on the environmental impact of a product where there are no international agreements or set standards in existence which define good environmental practices in emerging markets.

World Growth considers that this Bill is poor public policy which has the potential to open the floodgates for legislative intervention over a broad range of issues without requiring any consensus on what objective standards should be met before a product is subject to mandatory labelling.

World Growth considers that this is approach to food labelling, which has historically been an issue of consumer health and safety, is a dangerous use of government intervention. These measures also have the potential restrict trade and will distort markets. Access to markets by producers is limited and consumers are denied access to products. The result will be lower growth in emerging markets and higher prices in developed nations.

For further information please contact media@worldgrowth.org

World Growth Chairman, Alan Oxley, is available to provide any further clarification.

About World Growth

World Growth is a non-profit, non-governmental organization established to expand the research, information, advocacy, and other resources to improve the economic conditions and living standards in developing and transitional countries. At World Growth, we embrace the age of globalization and the power of free trade to eradicate poverty and create jobs and opportunities. World Growth supports the production of palm oil and the use of forestry as a means to promote economic growth, reduce poverty and mitigate greenhouse gas emissions. World Growth believes a robust cultivation of palm oil and forestry provides an effective means of environmental stewardship that can serve as the catalyst for increasing social and economic development. For more information on World Growth, visit www.worldgrowth.org.