



Australian Government

**Department of Innovation
Industry, Science and Research**

SUBMISSION

**HOUSE OF REPRESENTATIVES
HOUSE STANDING COMMITTEE ON ECONOMICS
INQUIRY INTO FOOD STANDARDS AMENDMENT (TRUTH IN
LABELLING – PALM OIL) BILL 2011**

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**DEPARTMENT OF INNOVATION, INDUSTRY,
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Executive Summary

The Department of Innovation, Industry, Science and Research (DIISR) has administrative responsibility for origin labelling, including the ‘safe harbour’ provisions in the *Trade Practices Act 1974* covering ‘Made in (country)’ and ‘Product of (country)’ claims.

DIISR also manages the formal relationship between the Australian Government and the Australian Made Campaign Ltd (AMCL), under which AMCL licenses the *Australian Made, Australian Grown* green triangle logo to eligible users.

The National Measurement Institute (NMI) is responsible for establishing, maintaining and disseminating Australia’s physical, chemical and biological measurement standards and reference materials. NMI works closely with Food Standards Australia New Zealand (FSANZ) and other government agencies and industry on the measurements that underpin information provided on food labels.

The use of an extensive range of measurements is important to ensuring consistency, accuracy and usefulness of food labels. The balance of costs (impact on regulation and therefore productivity) and benefits is an important consideration in deciding the extent to which information is required on food labels.

Through this submission, DIISR provides comment on the following issues as they impinge on the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011:

- current food regulatory arrangements and their relationship with the Labelling Logic Review (the Blewett review)
- voluntary industry and other initiatives
- impact on industry of an increased regulatory burden associated with additional labelling requirements.

DIISR considers that any labelling regime should place the lowest possible burden on industry (minimum effective regulation), provide adequate information to consumers and other stakeholders and be in accord with public health and safety. Given the limited amount of space available on a food label, and the ability to use other mechanisms to provide information to consumers (such as the internet), mandated information needs careful consideration. Action should be based on available scientific evidence and the results of regulatory impact assessments.

Background

DIISR strives, as a key priority, to encourage the sustainable growth of Australian industries by developing a national innovation system that drives knowledge creation, cutting-edge science and research, international competitiveness and greater productivity.

The Department is committed to developing policies and delivering programs, in partnership with stakeholders, to provide lasting economic benefits ensuring Australia’s competitive future and improved productivity. The Department also works

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to boost innovation by Australian industry and improve social and economic benefits for the Australian community.

DIISR has policy interests in the labelling of food arising from the portfolio responsibility for aspects of origin labelling and related policy issues, including:

- general responsibility under the Administrative Arrangements Orders (AAOs) for country of origin labelling and food industry policy;
- administrative responsibility for the defensive provisions in the *Trade Practices Act 1974* covering ‘Made in (country)’ and ‘Product of (country)’ claims (sometimes referred to as ‘safe harbour’ defences);
- policy advisory responsibilities in relation to trade / trade barriers / impacts of origin-based preferential duties and restrictions on Australian industry; and
- policy advisory responsibilities in relation to preferential treatment under Free Trade Agreements, other tariff concessions where origin may be an issue, and international rules of origin for non-preferential purposes.

Palm Oil and its Uses

‘Palm oil is the world’s most traded and most affordable cooking oil as well as a versatile product with many uses. Oil palm, the crop that is used to produce palm oil, has a higher yield of vegetable oil per hectare than any other major oil crop.

Palm oil production has contributed to economic benefits such as government revenues, profits for companies, employment, and raised incomes for smallholders. In Indonesia—the world’s largest producer - the industry generated US \$12.4 billion in foreign exchange from palm oil exports in 2009, and supports millions of jobs and opportunities for rural farmers’¹.

Palm oil and its fractions (palm olein and palm stearins) are high in saturated fat content (45-60%). It is present in 50% of packaged products. Palm oil is used in baked products such bread, biscuits; fried products such as chips; confectionery such as chocolate and cosmetics such as shampoo. 85% of the palm oil produced comes from Malaysia and Indonesia.

Palm oil derivatives (oleochemicals) are produced by fractionation, hydrogenation and inter-esterification. They are found in a range of food and non food products including:

- fatty acids - soaps, candles, vulcanised natural rubber, methyl esters - detergents, plasticizers, lubricants
- fatty amines - fabric softeners, hair conditions
- fatty alcohols - cosmetic creams, lotions, shampoos
- glycerine - pharmaceuticals, toiletries
- expoxidised palm oil - rubber and polyvinyl chloride products

A major concern for the Advocate for the Consumer, Cosmetic, Hygiene and Specialty Products Industry (ACCORD) is the extent to which this Bill has the potential to cover these palm oil derivatives. The sources for many cosmetic

¹ <http://www.wri.org/stories/2011/03/world-bank-group-palm-oil-and-poverty>

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ingredients are interchangeable, such as palmitic acid which can be made from palm oil or other oils.

Current Palm Oil Labelling Requirements

Australia has two well established, collaborative and rigorous regulatory frameworks (consumer law and food regulation) that monitor food standards and safety. Together they produce considerable net benefits to the community and aim to achieve minimum effective regulation. Further improvements to the current regulatory framework are still needed, however, such as in the area of food origin labelling which is administratively complex.

Enforcement of legislative and regulatory measures is divided between several agencies at State and Commonwealth level, including the Australian Competition and Consumer Commission, State and Territory consumer protection agencies, and the Australian Customs and Border Protection Service.

Palm Oil as a Food

The *Food Standards Australia New Zealand Act 1991* (the FSANZ Act); Food Regulation Agreement, to which the Commonwealth, State and Territory governments are parties; and the Australia New Zealand Joint Food Standards Treaty govern food regulation in Australia.

Specific food standards are developed by FSANZ, in accordance with Australia and New Zealand Food Regulation Ministerial Council policy and the FSANZ Act, and within the framework of the Australia New Zealand Food Standards Code (the Code). The food standards in the Code are given legal effect by State, Territory and New Zealand legislation. The Code's requirements must be read in conjunction with the relevant local food legislation and the *Competition and Consumer Act 2010*.

The Code contains a standard requiring labelling and naming of ingredients in foods. In general terms, Standard 1.2.4 – Labelling of Ingredients requires that oils be qualified as to whether the source is animal or vegetable. Certain vegetable oils, including peanut, soybean or sesame oils, need to be specifically declared on the label so as to inform consumers who may have an allergy to these foods. Palm oil is currently labelled as a vegetable oil and there are no other specific requirements for its labelling. FSANZ has previously considered and rejected an application requesting a mandatory labelling requirement for palm oil.

Palm Oil as a Good

The *Competition and Consumer Act 2010* (formerly Trade Practices 1974) is administered by the Australian Consumer and Competition Commission (ACCC). The ACCC's role in food labelling is contained in its wider role of administering the *Competition and Consumer Act 2010* which covers goods and services.

A Memorandum of Understanding facilitates cooperation and coordination between FSANZ and the ACCC in relation to areas of overlap between the Code and the *Competition and Consumer Act 2010*, particularly in the area of false or misleading labels.

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The *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* require the mandatory labelling of palm oil if it is an ingredient in cosmetic products. The mandatory information standard does not require the listing of the quantity or percentage of each ingredient.

Labelling Logic – Review of Food Labelling Law and Policy (the Blewett Review)

The Review of Food Labelling Law and Policy (the Blewett Review) was commissioned by the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) and chaired by Dr Neal Blewett AC. It was the subject of sustained interest from the media, general public, industry and other stakeholders. The Final Report of the independent review was released in January 2011.

The Ministerial Council is responsible for developing a comprehensive response to the recommendations in the Report by December 2011. Jurisdictions are currently working with the Commonwealth Government to formulate this response. DIISR is a participant in the process.

The Review Committee considered the inclusion of ingredients, including palm oil, on food labels. Recommendation 12 of the Report states: That where sugars, fats or vegetable oils are added as separate ingredients in a food, the terms ‘added sugars’ and ‘added fats’ and/or ‘added vegetable oils’ be used in the ingredient list as the generic term, followed by a bracketed list - e.g., added sugars (fructose, glucose syrup, honey), added fats (palm oil, milk fat) or added vegetable oils (sunflower oil, palm oil).

In its report of 31 August 2010, after consideration of the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011 as introduced into the Senate, the Senate Community Affairs Legislation Committee recommended that the government ‘fully consider’ Recommendation 12 of the *Review of Food Labelling Law and Policy (2011)*.

Voluntary Industry Initiatives

The Roundtable on Sustainable Palm Oil (RSPO) was formed in 2004 in response to pressing global calls for sustainably produced palm oil with the objective of promoting the growth and use of sustainable oil palm products through credible global standards and engagement of stakeholders. The seat of the association is in Zurich, Switzerland, while the secretariat is currently based in Kuala Lumpur.

RSPO is a not-for-profit association that unites stakeholders from seven sectors of the palm oil industry - oil palm producers, palm oil processors or traders, consumer goods manufacturers, retailers, banks and investors, environmental or nature conservation NGOs and social or developmental NGOs - to develop and implement global standards for sustainable palm oil.

Whilst palm oil is a more sustainable source of vegetable oil than other oil crops, RSPO is concerned that the growing demand for palm oil for food and biofuel could lead to rapid and ill-managed expansion of palm oil production and result in serious environmental and social consequences. In Southeast Asia, for example, the expansion of oil palm could threaten the rich biodiversity in the region. Any further

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expansion by indiscriminate deforestation would have a drastic effect on endangered animal species such as the orang-utan, rhinoceros, elephant and tiger in Borneo and Sumatra².

RSPO is the main certification body for certified sustainable palm oil. Roundtable certified sustainable palm oil accounts for about 8% of total global production of palm oil. Certified sustainable palm oil is currently more costly, although prices may come down as supplies increase. Unilever and Coles Supermarkets are RSPO members.

In November 2009, the first shipment of RSPO-certified sustainable palm oil was delivered to ports in Europe. Among the first buyers were Unilever and Sainsbury Supermarkets.

The Australian Food and Grocery Council (AFGC) has advocated for a voluntary approach to the listing of palm oil and notes that some food producers, including Coles and Woolworths, already voluntarily indicate if palm oil is included as an ingredient in their housebrand products, such as waffle cones, carrot cake, peanut butter and hazelnut spread.

Other Initiatives

Food Health Dialogue

The Food Health Dialogue, chaired by the Hon Catherine King MP, Parliamentary Secretary for Health and Ageing, is a collaboration between the food industry, government and public health groups to reduce the level of saturated fat in the food supply. The Commonwealth Scientific and Industrial Research Organisation (CSIRO), a portfolio agency of the Minister for Innovation, Industry, Science and Research, is represented on this body.

The Dialogue is pursuing, as its primary activity, action on food innovation to enhance health outcomes, including a reformulation program to reduce risk-associated nutrients, including saturated fat, sugar, salt and energy and increase beneficial components such as fibre, wholegrain, fruits and vegetables, across a range of commonly consumed foods.

Over time, action plans will be developed for each of the priority food categories engaged under the Dialogue. Action plans will include details of industry agreed targets for product reformulation, as well as portion size and consumer messaging strategies.

The Food and Health Dialogue will monitor closely the progress of industry towards meeting agreed actions, with further information on monitoring methods to be included in each food category action plan. The use of palm oil, which is 55% saturated fat, is self-limiting as industry is working to reduce the use of saturated fats.

Terms of Reference

On 7 July 2011 the Selection Committee, requested the Committee to review the *Food Standards Amendment (Truth in Labelling - Palm Oil) Bill 2011*.

² <http://www.rspo.org/files/pdf/Factsheet-RSPO-Overview.pdf>

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Purpose of the Bill

The purpose of the Bill as amended is to create an Act to ensure that consumers have clear, accurate information about the inclusion of palm oil in goods.

Effect of the Bill

The effect of the Bill if it becomes an Act is to:

(a) Amend the *Food Standards Australia New Zealand Act 1991* as follows:

“The Authority (being FSANZ) must, within 6 months after the commencement of this section, develop and approve labelling standards that prescribe that producers, manufacturers and distributors of food containing palm oil, regardless of the amount of palm oil used in the food or used to produce the food, must list palm oil as an ingredient of the food”; and

(b) Amend the *Competition and Consumer Act 2010*³ (Australian Consumer Law) to include:

1. Section 33 of Schedule 2

Before “A person”, insert “(1)”

2. At the end of section 33 of Schedule 2 (before note)

“For the purposes of subsection (1), the characteristics of any goods include the use of palm oil in the goods or to produce the goods”.

The amendment to the Australian Consumer Law (ACL) broadens the Bill to cover potentially all goods, contrary to the Bill’s original intention. It aims to prevent misleading conduct about whether, as part of the characteristics of a good, a good uses palm oil. Manufacturers of cosmetics are currently required to list palm oil as an ingredient⁴.

Impact of the Proposed Additional Labelling Requirements on Industry

DIISR recommends that Government not support this Bill and look to other policy responses to address the environmental and ethical labelling of food issues that were raised by the Bill prior to its amendment by the Senate.

DIISR considers that there are a number of fundamental problems with the Bill as amended and drafted:

- labelling of palm oil in isolation from other similar ingredients is an inconsistent and unwarranted policy response to what was initially an attempt to address an environmental issue. Current food regulatory arrangements in place are the product of extensive negotiation and have the support of all

³ Section 33 Misleading conduct as to the nature etc. of [goods](#) . A [person](#) must not, in [trade or commerce](#), engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any [goods](#).

Note: A pecuniary penalty may be imposed for a [contravention](#) of this section.

⁴ *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* (in force under the Trade Practices Act 1974), *Industrial Chemicals (Notification and Assessment) Amendment (Cosmetics) Act 2007* and the *Cosmetics Standard 2007*

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Australian jurisdictions and New Zealand. The Commonwealth is not in a position to direct the jurisdictions as to how to legislate to give effect the purpose of the Bill. The Bill has direct implications for the Australia and New Zealand joint regulatory process. In addition, the Bill has not been subject to any regulatory impact assessment.

- the application of the Bill and proposed food standard to fractions of palm oil is uncertain. Palm oil is both a specific term for the oil obtained from the pulp of the palm fruit and a generic term also encompassing palm kernel oil and various fractions of palm oil (such as palm olein, palm superolein and palm stearin). Each of these oils has a specific fatty acid profile, with saturated fat contents varying from 35% up to 80%. In addition, the costs and application of any enforcement regime have not been identified.
- there is potential for the Bill to undo the voluntary work already underway in the food industry. The Bill may force a sudden shift to either certified sustainable palm oil, noting the limited supply of approximately 8% of total production, or other forms of vegetable fat. In order to replicate the desirable food technology characteristics of palm oil, other vegetable fats may be modified which could lead to an increase in trans-fatty acids, known for deleterious effect they have on cholesterol levels and the risk of heart disease.

DIISR notes the concern raised by industry, particularly the Australian Food and Grocery Council (AFGC) and ACCORD in relation to the cost to industry in relabelling, reduced flexibility in food formulations and competition with imported products.

Claims made on labels should be accurate and verifiable. Many food labels are general in nature, based on average measurements, manufacturers' declarations (which may or may not be externally validated by laboratory testing); or – as is often the case with nutrition information panels – calculated or derived from technical literature. Generic food labels are often poor information sources and can be inaccurate and potentially misleading.

Where labelling is mandatory, or intended to provide a basis for consumer choice and a level-playing field, the level of accuracy in the data reported on the labels should be clear. The data should also be able to be verified through measurement and testing. Without a sound basis for the data reported on labels, consumer confidence in labelling information may not be justified. There can, however, be difficulties in underpinning labels with measurement where the entity being labelled is poorly defined in measurement terms.

Conclusion

DIISR's view is that:

- the issues raised in the Bill as amended be responded to as part of the Government's response to *Labelling Logic – Review of Food Labelling Law and Policy* (the Blewett Review);
- voluntary industry initiatives such as those undertaken by Unilever and others to promote sustainability in palm oil cultivation should be encouraged; and
- environmental concerns raised by the proposers of the original Bill in relation to destruction of sustainable habitats for wildlife be addressed by a separate policy response designed specifically for that purpose.

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DIISR is concerned that the food industry will bear significant costs for a highly uncertain outcome should this Bill become an Act. DIISR notes that current requirements for information on food labels already constitute a significant burden on food manufacturers. It is also possible that requirements arising from new technologies, such as genetic modification, will add to the complexity of the current regulatory framework and place additional costs on food manufacturers.

DIISR is of the view that any changes to existing labelling requirements should, as far as possible, provide for a simpler regime underpinned by a set of requirements that impose the lowest possible burden on industry (minimum effective regulation) consistent with the provision of adequate information to consumers, regulatory agencies and other stakeholders.

There are currently non-regulatory means of providing consumers with information on the source of palm oil in products. Industry endorsement schemes and associated logos allow industry to respond to consumer demand for this information.