



15th August, 2011

Committee Secretary
Standing Committee on Economics
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Re: Inquiry into the Food Standards Amendment (Truth in Labelling - Palm Oil) Bill 2011

Dear Committee,

Thank you for the opportunity to provide comment on the proposed Food Standards Amendment (Truth in Labelling - Palm Oil) Bill 2011.

The Australian Oilseeds Federation (AOF) is the peak industry body for the Australian vegetable oil industry, with membership spanning the value chain, including seed breeders, farmers, grain handlers, processors and food and feed manufacturers. The value of the industry is conservatively valued at \$2.5 billion, with close to half the value represented in direct agricultural produce (canola, sunflower, safflower and soybeans). The role of the Federation is to promote the development, expansion and improvement of Australian oilseed production, and to facilitate linkages throughout the value chain for the common good of the industry.

The AOF has significant concerns with the proposed Bill, and these concerns fall into two broad areas:

1. Concerns of Policy;
2. Concerns of Practicality.

Policy concerns relate to the apparent overriding of the existing process to modify the Food Standards Code, by providing for specific labelling provisions in the Food Standards Australia New Zealand Act 1991.

Practical concerns relate to the lack of clarity around the definition of 'palm oil'; the immense difficulty in enforcement of such a labelling requirement; and the imposition of additional regulatory burden for certain members of the AOF.

Policy Concern:

The AOF believes that the inclusion of a specific labelling requirement within the Food Standards Australia New Zealand Act 1991 (the Act) represents an incongruous precedent within Australian and New Zealand food regulatory system.

At present, food labelling is prescribed (in the main¹) within the Food Standards Code, effectively a set of labelling regulations set by Food Standards Australia New Zealand (FSANZ). This Code has been in place for the last decade, and FSANZ, under the authority of the FSANZ Act, has a well developed and proven process for introducing amendments to the Code. This includes the requirement for proposed changes to be accompanied by information in support of the proposal (S 12.2 (b) of the Act); the due consideration of cost benefit analysis (S 2.13 (c)); public consultation period (s14); preparation of a draft assessment of the proposal (S. 15); and publication of any new standard or variation (S.23). This process has been operating successfully for the past decade, and is well accepted by both industry and the community as an effective, consultative approach to amending the Food Standards Code.

The Act is very clear in its purpose, being "...to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand...". **The Act was not established to provide for specific food labelling requirements.** This is specifically addressed in the Code.

The use of the proposed Food Standards Amendment (Truth in Labelling - Palm Oil) Bill 2011 to deliberately bypass the existing provisions within the Act (which allows for changes to the Code) presents an incongruous inconsistency and fails to recognise the existing successful and proven system for making changes to the Food Standards Code.

The AOF does not support the use of the proposed Bill to circumvent the existing and proven system for introducing changes to the Food Standards Code.

Practical Concerns:

The second set of concerns the AOF has in relation to the proposed Bill is the issue of the practical application of the Bill. This includes the lack of definition around the term "palm oil"; the chemistry of palm oil and its derivatives, making detection (and thus enforcement) difficult; and the additional regulatory burden this will place on certain members of the AOF.

i. Definitional issues: The oil palm plant produces a fruit which yields two very distinctive oil types- 'palm oil' (from the fruit pulp) and 'palm kernel oil' (from the seed within the fruit). The term "Palm Oil" is not defined in the Bill as to whether it includes 'palm kernel oil'. For many applications within the food industry, it is neither straight palm oil nor straight palm kernel oil which is used, but rather 'fractions' of the oils. These fractions are produced by 'fractionating' the oil, by chilling the oil slowly, to produce palm olein and palm stearine; palm kernel olein and palm kernel stearine. These fractions can be further modified through partial or full hydrogenation or use in baking and pastry products, and in the production of margarine and spreads. These modified oils, while derived from palm oil, are no longer palm oil, as defined (e.g. Codex Stan 210-1999).

The AOF is concerned that the proposed Bill is very unclear as to the definition of 'palm oil', which, as it stands, is open to broad interpretation.

ii. Chemistry Issues and detection/enforcement: Palm oil and palm kernel oil, like all fats and oils are predominantly made up of fatty acids. The majority of vegetable oils tend to be made up of combinations of mostly just 8 fatty acids. It is the combination of these fatty acids which determine the oil type. A chemical analysis of any one oil can accurately determine the oil type based on its constituent fatty acids.. Palm oil (from the fruit pulp) , for example, tends to be 40-45% palmitic acid; 4-6% stearic acid; 36-44% oleic acid; 9-12% linoleic acid.² However, when oil types are blended (e.g. a blend of palm oil, canola and butter as might be used in a baked product) it becomes very difficult to determine the constituent oils as the accepted analytical method detects the fatty acids only. For

¹ Exceptions include the likes of weights and measures requirements, container deposit legislation requirements, importer address requirements, etc.

² There are other minor fatty acids in palm oil- but these 4 are the major ones.

example, all the three afore mentioned oils contain the same fatty acids (palmitic, stearic, oleic, and linoleic acids, (together with some other fatty acids in lesser quantities), and it is difficult (and costly) to determine the constituent oil types. When palm oil (whether olein, stearine, kernel olein or kernel stearine) or a blend containing palm oil (or olein, stearine, etc) is further modified, (e.g. hydrogenated), determination of the constituent oils is extremely difficult.

Further chemical modification and refining of palm oil can produce additional components (e.g. glycerol)- which is indistinguishable from glycerol from any other animal or vegetable source.

Consequently, there are significant challenges in enforcing the requirements to label 'palm oil' in the proposed Bill. The AOF contends that the cost and complexity involved with effectively monitoring for palm oil labelling will deter relevant jurisdictions (operating with limited budgets and time), from undertaking monitoring and enforcement of this labelling requirement, particularly if at the expense of monitoring and enforcement of food safety issues.

The AOF is concerned that the requirements of the proposed Bill, if enforced, will add significant cost to the food regulatory system.

iii. Regulatory Burden: The proposed Bill will serve to add yet more regulatory burden for food manufacturers and importers. The food industry in Australia is an essential element for National security, and yet is under extreme competitive pressure from lower cost countries. Importation of food products, from fruit and vegetables, to processed foods is now common place. The Australian food industry, which includes members of the AOF, operates on very thin margins, with pressure from retailers at one end of the value chain, and from overseas sourced product at the other, any additional regulatory burden inevitably adds cost to the system. Not only is there the one-off cost to change labels, more importantly, the prescription of labelling requirements for specific ingredients limits sourcing flexibility. The ability to switch out of (or into) palm oil in a cost optimised formulation is impeded by the requirement to change the label when this specific ingredient is used. This can lead manufacturers to opt for a "May contain.." statement (i.e. "may contain palm oil") to enable sourcing flexibility, but does little to inform consumers.

Unfortunately, ultimately, the community pays for any additional cost that industry has to bear. This can be in the form of higher prices, if the manufacturer is able to pass the cost increase on, or (as increasingly is the case), manufacturing closes down in Australia in preference for overseas sourced products.

The AOF views the proposed Bill as yet another cost imposition for the Australian Food Industry, the implication of ongoing regulatory costs being the declining viability of the Industry.

In conclusion, the Australian Oilseed industry fully recognises and supports the need for sustainable production of all vegetable oil, and does not condone or support the destruction of high conservation value forests and associated biodiversity in the quest for increased production. However, in addition to the significant concerns outlined in this submission, the AOF does not consider that the proposed Bill will be effective in changing behaviour of unscrupulous operators who flaunt their own country laws and undertake unauthorised clearing of high conservation land.

Yours sincerely,



Nick Godard
Executive Director, Australian Oilseeds Federation.