

The Secretary
 House Economics Committee
 Parliament House
 Canberra ACT 2600

Accord Submission: Inquiry into labelling of palm oil (*Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011*; Senate amendment to *Competition and Consumer Act 2010*)

1. Background to Accord and the Australian formulated products industry

Accord Australasia is the national industry association for the manufacturers and suppliers of formulated hygiene, cosmetic and specialty products - a key sector of Australia's chemical products industry. Representing approximately ten percent of nationwide manufacturing activity, Australia's chemical and plastics industries are a vital part of a healthy Australian economy. Industry products are important for Australian manufacturing and business.

ACCORD member companies (*see Attachment 2 - Membership list*) manufacture and/or supply formulated products for use in both households and industry.

Our sector's products play a vital role in:

- Safeguarding public health: Maintaining essential standards of hygiene and sanitation in institutions, hospitality, manufacturing, agriculture and at home.
- Promoting personal well-being: Helping people keep clean, healthy and shielded from harmful effects of the environment.
- Maintaining comfortable homes: Enabling people to keep their everyday surroundings clean and inviting.
- Enhancing quality of life: Giving people greater personal freedom through time- and effort-saving technologies.
- Boosting confidence and emotional wellbeing: Providing opportunities for self expression, individuality and pampering.
- Keeping the wheels of commerce and industry turning: Fulfilling specialised uses in industry, institutions and agriculture

This includes the following important products: *adhesives, aftershave, air-care products, antiperspirants, automatic dishwasher detergents, baby-care products, bar soaps, bath additives, body treatments, car-care products, carpet cleaners, cleaning solvents, cosmetics, dairy & poultry sanitisers, dishwashing detergents, deodorants, depilatories, fabric care products, fabric softeners, floor cleaners, furniture care products, gel cleaners, hard-surface cleaners, hair conditioner, hair colour treatments, hospital disinfectants, household insect sprays, hygiene products, industrial cleaners, industrial specialities, liquid bleach, liquid soaps, make-up, moisturisers, mouthwash, mould remover, nail-care products, oven cleaners, personal insect repellents, sanitising scrubs, sealants, shampoo, shoe-care products, shower & bath cleaners, skin-care products, sunscreens, toilet cleaners, toothpaste, water treatment agents, window cleaners.*

Accord has around 95 member companies which range from smaller Australian-owned family businesses to the local operations of large consumer brand multinationals.

ACCORD Australasia Limited ACN 117 659 168 ABN 83 205 141 267

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Our industry is committed to developing solutions for healthy living and a quality lifestyle

Headline features and statistics for our industry's economic footprint include:

- Estimated annual retail-level sales of industry products nudging the \$10 billion mark.
- Accord member companies directly contribute more than 14,000 full-time equivalent jobs.
- Nationally more than 170 offices and more than 50 manufacturing sites are operated by Accord member companies.

Our sector is highly regulated with a recent internal Accord survey of members showing that:

- 97 percent have dealings with the National Industrial Chemicals Notification & Assessment Scheme (NICNAS);
- 77 percent with the Therapeutic Goods Administration (TGA);
- 58 percent with the Australian Quarantine Inspection Service (AQIS); and,
- 39 percent with the Australian Pesticides & Veterinary Medicines Authority (APVMA).

In essence, there are three distinct product segments for our industry, each with distinct supply chains through to the product end-user:

- Industrial and Institutional products (e.g. commercial cleaning products, agricultural sanitisers) which are mainly sold on a business-to-business or business-to government basis or through agricultural product resellers.
- Fast-moving consumer goods (e.g. household cleaners, laundry detergents, toothpaste, shampoo, soap, insect repellents, household pesticides and herbicides) which are sold to consumers primarily via either: grocery retailers, pharmacies, mass-market retailers, direct selling and hardware chains.
- Cosmetic and beauty industry products (e.g. make-up, skincare, sunscreens, fragrances, hair dyes) which are sold to consumers primarily via either: department stores, specialty retailers, grocery retailers, pharmacies, mass-market retailers, direct selling, hair salons, beauty salons, spas and on-line.

On behalf of our member businesses we welcome this opportunity to document our industry's concerns in relation to this Bill.

Our specific concern relates to the amendment to Section 33 of Schedule 2 of the *Competition and Consumer Act 2010*, with a new specific reference to the use of palm oil in all goods.

2. Our industry's position on the Bill (in particular, the Senate's amendment to the *Competition and Consumer Act 2010*)

Despite the fact that Accord remains confused about the full extent of the potential impacts of the extension of what was initially a food legislation matter to a range of other products (via the amendment to the *Competition and Consumer Act 2010*), our industry concerns were well summarised in letters we sent to relevant Government and Opposition portfolio 'ministers' in late June and early July.

Attached, as the core content of Accord's submission, is our letter dated 1 July 2011 to Treasury Parliamentary Secretary the Hon David Bradbury MP in his role as 'portfolio minister' responsible for consumer and competition law and the ACCC (Attachment 1).

In this letter – and similar ones sent to Prime Minister Gillard, Opposition Leader Abbott, Health Parliamentary Secretary King and shadow ministers Billson, Dutton and Mirabella – Accord makes the following points:

- **Lack of consultation**: Our industry is greatly concerned at the total lack of consultation with businesses in our sector on the amendment to the *Competition and Consumer Act 2010* to

introduce a new legislative requirement on “*misleading conduct as to the use of palm oil*” that will apply to “*the characteristics of any goods*” (our underlining).

Accord was first alerted to the Senate’s passage of this new legislative impost following contact from officials within the federal Department of Innovation, Industry, Science and Research. This is clearly unacceptable consultation practice in terms of parliamentary best practice and contrasts unfavourably with the many months of consultation available to all stakeholders with an interest in food matters – including industry, NGOs and the public – following the recommencement of a major Senate Committee Inquiry on 27 October 2010.

- **Confusion:** We remain entirely confused about how this amendment to the *Competition and Consumer Act 2010* would work in practice. And the rationale or policy justification supporting both its need and its extension to all goods in commerce in Australia – should such a justification in fact exist – is also entirely unclear to Accord.

At the early stages of coming to grips with this matter, following the Senate debate, we were even uncertain if this meant new labelling requirements for products in our sector like cosmetics and household cleaners. In the absence of any clarification, Accord was left to assume that the Senate was imposing a new labelling requirement.

Subsequent documentation published on the Senate website would now indicate that this may not be the case. But just what is expected and required of businesses under this amendment? And is what is expected technically, legally and administratively feasible? Some guidance and clarity would be most welcome.

This issue has additionally resulted in some international confusion – with some overseas industry members assuming that passage of this Bill through the Senate had meant that it would automatically pass into law (not knowing that it is yet to be debated in the House).

- **‘Palm oil’ labelling is already mandated for cosmetic and personal care products:** Cosmetic and personal care products have been required under Australian law to provide ingredient listing on labels since 1993.

These requirements are administered by the ACCC and mandate that either internationally harmonised INCI (International Nomenclature Cosmetic Ingredients) ingredient names or English common names appear on labels.

This means that if a cosmetic or personal care product contains palm oil (or palm kernel oil) as is then the label will list either “palm oil” or “*elaeis guineensis* (palm) oil” (or “palm kernel oil” or “*elaeis guineensis* (palm) kernel oil”).

- **It is unhelpful for newly-minted - and complex - national consumer law, like the Competition and Consumer Act 2010, to be tinkered with for very specific single-issue legislative goals, as has occurred in this case:** The national consumer law embedded in the relatively recently enacted *Competition and Consumer Act 2010* was the result of extensive policy announcements and policy consultation. It followed a 2008 Productivity Commission Review Report and was endorsed by the COAG before being passed on to Treasury for policy consultation and development.

Accord’s was one of over 100 submissions received by Treasury to its 2009 Consultation Paper: *An Australian Consumer Law: Fair Markets - Confident Consumers* on this proposed new national consumer law framework. And from these processes the new national consumer law was introduced into parliaments to “replace 20 existing State, Territory and Commonwealth laws with one law.”

The point being made here is twofold. Firstly, this new national legislative framework has only recently been put in place. All participants in the national economy – consumers, businesses, governments – are coming to grips with it, as are the responsible regulators and the courts.

And secondly, the details enshrined in the legislation have, as would be expected, been developed with extensive consultation opportunities for all parties and, just as significantly, extensive assessment of impacts and consequences, costs and benefits by Treasury experts. This included essential Regulatory Impact Assessment processes.

For these reasons Accord considers the decision of the Senate to tinker with this law for very specific single-issue legislative goals, such as palm oil labelling, to be somewhat reckless. Should not Treasury and the ACCC have been asked for advice on whether the proposed amendment to Section 33 of Schedule 2 of the *Competition and Consumer Act 2010* is likely to be feasible (technically, legally and/or administratively), cost-effective or even warranted? Should not a Regulatory Impact Assessment be undertaken?

Certainty, uniformity, simplicity and 'no-surprises' were the cornerstones holding up the development of the new national consumer law. Should the House decide to follow the Senate's lead on this particular issue and embark on what can only be considered the willy-nilly piecemeal amendment of this important micro-economic reform law then these cornerstones will be knocked down. And this will be to the detriment of both consumers and business.

In a similar vein, on the issue of allowing policy and consultation processes to proceed to completion, so they may appropriately drive policy implementation, Accord notes that this palm oil labelling bill pre-empts the conclusion of the Blewett Review and its full consideration by the Australia New Zealand Food Regulation Ministerial Council. While Accord does not speak on food industry issues, the principle that should be followed here is of broader relevance across industries. These policy reviews and consultations should not be pre-empted, except in emergency circumstances. And this principle should apply to both the executive arm of government and the parliament.

Additional complexities associated with ingredients used widely in the global and local production of hygiene, cosmetic and specialty products: In general, there is a significant technical distinction between the making of food products and the making of cosmetics and hygiene products.

Rarely would palm oil be used as *is* in our industry sectors' products as may often be the case for foods. More often than not it will have been reacted to form a new compound or ingredient. As an example, let's look at soap making using palm oil. Whether undertaken on an industrial scale or by a craft market hobbyist, the basic process is the same. The palm oil is *reacted* with lye or caustic soda. What results is a new chemical – the sodium salt of a fatty acid ester of palm oil, generally called sodium palmate.

However, things get even more complicated when you consider an ingredient in widespread global commerce like sodium cetearyl sulfate. The oil-derived part is the 'cetearyl' part. But a wide variety of natural oil sources can be used in its process of manufacture. These can vary depending on price and availability in international markets. Sometimes palm oil is used. Sometimes coconut oil. And sometimes even tallow (beef fat). But the ingredient is still, chemically, sodium cetearyl sulfate. And further complicating this, there are some ingredients that can be made with either natural oils, like palm oil or beef fat, or via entirely synthetic processes. The issue here is that product formulating businesses at the downstream end of the global ingredient supply chain often have no way of knowing in many cases whether they have a palm oil version of an ingredient or not. And this could potentially apply across

hundreds of ingredients. Given this difficulty, it is even harder for formulators to determine if specific ingredients are derived from 'sustainable' palm oil sources or otherwise.

Again without knowing clearly what the amendment to Section 33 of Schedule 2 of the *Competition and Consumer Act 2010* is trying to achieve, it can only be surmised that the practical supply chain issues described above would work to make the potential imposts on hygiene, cosmetic and specialty product businesses greater than for businesses using palm oil as is. Presuming, of course, this was indeed the Senate's intent.

3. Conclusions and recommendation

Accord's submission focusses primarily on practical problems and unintended consequences arising from the amendment to the *Competition and Consumer Act 2010* to introduce a new legislative requirement on "*misleading conduct as to the use of palm oil*" that will apply to "*the characteristics of any goods*" (our underlining). We have considered these from the perspective of the hygiene, cosmetic and specialty products industry.

It is acknowledged that a major driver of the debate on palm oil and its labelling is the preservation of the habitat of the Orang-utan in South East Asia. Accord also notes that global efforts are underway on this goal through measures like the Roundtable on Sustainable Palm Oil (RSPO).

As an industry committed to travelling the path towards greater sustainability, we also have to recognise that sustainability considerations are rarely black and white. And the result is that there will always be trade-offs of some kind. Orang-utans are important. But so are people - in this case farmers in Indonesia, Malaysia and Papua New Guinea. Palm oil is a high-yielding oil crop. Replacing it with a lower yielding crop would simply require more land and resources for the same yield. Palm oil is a 'natural' ingredient. Replacing palm-oil derived ingredients with synthetic or petro-chemical versions may not satisfy those wanting 'natural' products. Palm oil is a vegetable based ingredient. Replacing palm-oil derived ingredients with animal fat based ingredients may not satisfy those wanting 'vegetarian' or 'vegan' products. Solutions in this case can rarely be reduced to an either-or decision. A balanced, evidence-based approach is what is needed.

Accord recommends that the House give thorough consideration to the problems arising from the Senate's proposed amendments to Section 33 of Schedule 2 of the *Competition and Consumer Act 2010* for this very specific, single-issue legislative goal. We recommend that the House not support this amendment.

15 August 2011

ACCORD Contacts in relation to this submission:

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The Hon David Bradbury MP
Parliamentary Secretary to the Treasurer
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Parliamentary Secretary

Food Standards Amendment (Truth in Labelling – Palm Oil) Bill – Issues and implications for the hygiene, cosmetic and specialty products industry

I am writing to provide some facts relating to the negative consequences and lack of industry consultation arising from the Senate's recent passage of amendments tabled by Senator Xenophon that would extend the application of palm oil labelling to all products, not just food products, as was the original intent of the *Food Standards Amendment Bill*.

It is Accord's hope that this letter will assist the Government in its response to this bill when it enters the House of Representatives.

By way of background, Accord is the national industry body for the Australian hygiene, cosmetic and specialty products industry. Our industry plays an important role within the national economy with retail-level sales nudging the \$10 billion mark and Accord members – who range from small family-owned Australian businesses to large global firms – directly employing more than 14,000 full-time equivalent positions across Australia.

Our industry is greatly concerned at the lack of consultation on this matter by any of the proponents or supporters of this bill within the Senate.

We received no prior warning or consultation opportunities. And, it would appear there has been no proper consideration of the consequences or indeed technical and legal feasibility of the 'Xenophon amendment'.

Accord was first made aware of this matter when contacted by officials in the Department of Innovation, Industry, Science and Research on the afternoon of Friday, 24 June 2011.

The 'Xenophon amendment' creates a new and entirely unanticipated and unwelcome impost on businesses in our sector.

Having read the Hansard debate, the only positive was the defense by Government senators – in this case your colleagues Senator McLucas, Senator Moore and Senator Feeney – of proper consultation, policy development and regulatory impact assessment processes.

For the record, our industry has been aware of debate around palm oil in food for some time and has, from the sidelines, watched the unfolding policy debate, and in particular the Senate Community Affairs Committee Inquiry which recommenced a long and extensive public consultation process on 27 October 2010.

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Our industry is committed to developing solutions for healthy living and a quality lifestyle

However, as any reasonable person would appreciate, a policy debate around a bill titled *Food Standards Amendment (Truth in Labelling- Palm Oil) Bill* was not considered of direct relevance to businesses within our sector. And this was further supported by the published terms of reference for the Senate Community Affairs Committee Inquiry into the bill (our bolding):

"The principal issues for consideration are:

1. The rights of consumers to be provided with accurate and truthful information to enable them to make an informed choice **about the products they are eating and purchasing**;
2. That **allowing palm oil to be listed a "vegetable oil" on food packaging is misleading to consumers**;
3. That the impact of palm oil production on wildlife, specifically Orang-utan's in South East Asia is significant unless it is done sustainably;
4. That sustainable palm oil can be produced with low impact on the environment and wildlife and with better labour laws on plantations; and,
5. That manufacturers should be encouraged to use sustainable palm oil in their production process and subsequently use the status of "Certified Sustainable Palm Oil" under this Bill."

Additionally, one of the principal drivers for this issue in food products – the saturated fat content of palm oil compared to some other oils and the potential public health benefits of better consumer labelling – is entirely irrelevant to our industry sector's hygiene, cosmetic and specialty products.

Cosmetic and personal care products have been required by law to provide ingredient listing on labels since 1993. These requirements are administered by the ACCC and mandate that internationally harmonised INCI ingredient names or English common names appear on labels.

This means if the product contains palm oil or palm kernel oil then these names will appear on the label ingredient list as "palm oil" or "elaeis guineensis (palm) oil" and "palm kernel oil" or "elaeis guineensis (palm) kernel oil". In essence this bill would appear to 'solve a problem' that doesn't exist, when it comes to cosmetics and personal care products.

This presumes, of course, that the bill's intent is only to cover the presence of palm oil as is in a product, rather than the hundreds of synthetic and semi-synthetic chemical ingredients used globally in cosmetic and personal care products and household cleaning products that are made by chemical reaction, using palm oil as the base material. It is unclear to our industry whether the 'Xenophon amendment' intends to cover all these ingredients.

The *Competition and Consumer Act 2010* is a complex law and Accord remains confused about how this amendment would work in practice. Additionally, it would seem somewhat reckless of the parliament to tinker with this law for specific single-issue legislative goals, like palm oil labelling. Especially without first allowing the ACCC to undertake a consultation process and feasibility assessment in relation to such changes.

It should also be noted that hygiene products such as household cleaning products are not subject to mandated total ingredient disclosure, as is the case for our industry's cosmetic products. Although Accord has implemented an effective voluntary disclosure program – *What's in it?* – which came into full force on 1 July 2011 and is well supported by relevant businesses in our industry. As such, this bill's imposts on the cleaning product segment of our industry would be significant.

It goes without saying that this would create a logistical nightmare throughout the global raw material supply chains for our industry. And this illustrates why the lack of consultation and engagement with our sector by the proponents and supporters of this bill in the Senate is not just poor political form, but bad public policy. Global trade issues come into play here.

There is also a major and significant technical distinction between the making of food products and the making of cosmetics and hygiene products that has been missed.

If using palm oil as an ingredient to bake cakes or make noodles the oil becomes part of the end product and would therefore be listed as such. In contrast, say I am making a soap based on palm oil. This could be done on an industrial scale or even by a craft market hobbyist, the basic process will be pretty much the same. The palm oil is *reacted* with lye or caustic soda. The end result is a *new* chemical – the sodium salt of a fatty acid ester of palm oil, generally called sodium palmate. The process is called saponification. And this is one the most basic – and useful – chemical processes known to humankind for centuries.

However, things get even more complicated when you look at an ingredient in widespread general commerce internationally like sodium cetearyl sulfate. The oil-derived part is the ‘cetearyl’ part. But a variety of natural oil sources can be used in the process. These can vary depending on price and availability within international markets. Sometimes palm oil will be used. Sometimes coconut oil. And sometimes even tallow (a.k.a. beef fat).

Is it now to be expected that a specific ‘palm oil’ label would be required under a unique Australian-only law if a cosmetic or hygiene product contains sodium palmate or sodium cetearyl sulfate? Would this not potentially breach Australia’s WTO obligations by creating a new and unjustified barrier to trade that is going to be a logistical nightmare for businesses at the downstream-end of the supply chain to comply with? Australian firms using these ingredients would not, in any realistic sense, be able to determine whether or not many of these ingredients are the palm oil or coconut oil versions.

Many Accord member businesses have been in contact with us to express their dismay at this proposed amendment to the *Competition and Consumer Act*. Their feedback indicates that this will impose a significant commercial impost at a time when they are looking for national leadership to boost the economy’s flagging productivity and reduce the burden of unnecessary regulation on our sector.

Unlike the food industry, our sector has not had the benefit of months of consultation since the Senate Inquiry on the *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill* recommenced on 27 October 2010.

It is hoped other members of the house will join with Government members in recognising this, along with the significant detrimental impacts and practical problems that would be generated by agreeing to the ‘Xenophon amendment’ and thereby applying labelling to all products.

Accord has also written on this issue to Prime Minister Gillard and Parliamentary Secretary King, as well as the Leader of the Opposition. Should you have any questions please contact me on 0422 363 646 or 02 9281 2322.

Yours sincerely,

<Unsigned e-copy>

Craig Brock
Director, Policy & Public Affairs

1 July 2011

cc. Bronwyn Capanna, Accord Executive Director

Attach. List of Accord Member Companies (2 pages)

Members

Consumer, Cosmetic and Personal Care

Advanced Skin Technology Pty Ltd	KPSS Australia Pty Ltd
Amway of Australia Pty Ltd	La Biosthetique Australia
Apisant Pty Ltd	La Prairie Group
AVON Products Pty Limited	L'Oréal Australia Pty Ltd
Beautiworx Australia Pty Ltd	LVMH Perfumes and Cosmetics
Beiersdorf Australia Ltd	Mary Kay Cosmetics Pty Ltd
BrandPoint Pty Ltd	Natural Australian Kulture Pty Ltd
Chanel Australia	Nutrimetics Australia
Clorox Australia Pty Ltd	NYX Pty Ltd
Colgate-Palmolive Pty Ltd	Procter & Gamble Australia Pty Ltd
Combe Asia-Pacific Pty Ltd	PZ Cussons Australia Pty Ltd
Cosmax Prestige Brands Australia Pty Ltd	Reckitt Benckiser
Coty Australia Pty Limited	Revlon Australia
De Lorenzo Hair & Cosmetic Research Pty Ltd	Sabre Corporation Pty Ltd
Elizabeth Arden Australia	Scental Pacific Pty Ltd
Emeis Cosmetics Pty Ltd	Shiseido (Australia) Pty Ltd
Energizer Australia Pty Ltd	The Heat Group Pty Ltd
Estée Lauder Australia	The Purist Company Pty Ltd
Frostbland Pty Ltd	Three Six Five Pty Ltd
GlaxoSmithKline Consumer Healthcare	Trimex Pty Ltd
Helios Health & Beauty Pty Ltd	True Solutions International Pty Limited
Johnson & Johnson Pacific	Ultraceuticals
Kao (Australia) Marketing Pty Ltd	Unilever Australasia
Kao Brands Australia Pty Ltd	Valeant Pharmaceuticals Australasia
Keune Australia	Weleda Australia Pty Ltd
Kimberly-Clark Australia	

Hygiene and Specialty Products

Albright & Wilson (Aust) Ltd	Lab 6 Pty Ltd
Applied Australia Pty Ltd	Novozymes Australia Pty Ltd
BP Castrol Australia Pty Ltd	Nowra Chemical Manufacturers Pty Ltd
Callington Haven Pty Ltd	Peerless JAL Pty Ltd
Campbell Brothers Limited	Recochem Inc
Castle Chemicals Pty Ltd	Rohm and Haas Australia Pty Ltd
Chemetall (Australasia) Pty Ltd	Solvay Interlox Pty Ltd
Clariant (Australia) Pty Ltd	Sopura Australia Pty Ltd
Cleveland Cleaning Supplies Pty Ltd	Tasman Chemicals Pty Ltd
Deb Australia Pty Ltd	Thor Specialties Pty Limited
Dominant (Australia) Pty Ltd	True Blue Chemicals Pty Ltd
Ecolab Pty Limited	Univar Australia Pty Ltd
Huntsman Corporation Australia Pty Ltd	Whiteley Corporation Pty Ltd
Jalco Group Pty Limited	

Associate Members

Equipment and Packaging Suppliers

HydroNova Australia NZ Pty Ltd
Megara (Aust.) Pty Ltd
SCHÜTZ DSL (Australia) Pty Ltd

Graphic Design and Creative

Ident Pty Ltd

Legal and Business Management

FCB Lawyers
KPMG
TressCox Lawyers

Regulatory and Technical Consultants

Archer Emery & Associates
Clare Martin & Associates Pty Ltd
Competitive Advantage
Engel Hellyer & Partners Pty Ltd
Robert Forbes & Associates
Sue Akeroyd & Associates
Toxikos Pty Ltd

Specialist Laboratories and Testing

ams Laboratories
Dermatest Pty Ltd
Silliker Australia Pty Ltd

August 2011