
The Parliament of the Commonwealth of Australia

Advisory report on the Food Standards Amendment (Truth in Labelling—Palm Oil) Bill 2011

House of Representatives
Standing Committee on Economics

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Canberra

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Foreword

The Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011 seeks to amend the *Food Standards Australia New Zealand Act 1991* and the *Australian Consumer and Competition Act 2010*. If passed, it would require Food Standards Australia New Zealand (FSANZ) to develop and publish a standard requiring food producers to label palm oil on packaging if it were an ingredient in the product or had been used in its production. It would also specifically list palm oil as a characteristic of all goods in relation to the misleading conduct provisions in the Australian Consumer Law.

The drivers behind the Bill are claims that the rates of deforestation in Indonesia and Malaysia are reducing habitat for orangutans and that orangutans are in danger of extinction. Deforestation is in turn said to be driven by agricultural interests in these countries clearing land to plant oil palms. This is a very productive crop, which can deliver yields five or more times per hectare than other oil crops.

The committee understands the strong community support for the goals of the Bill. Zoos Victoria gave evidence of its online and hard copy campaigns where thousands of Australians expressed concern about the connection between palm oil and the reduction of orangutan habitat.

However, the committee has come to the view that the Bill will not bring about the desired result. Instead, it will have a range of unintended consequences that will cause a great deal of damage to our commercial arrangements and international relations. Indeed, one industry group, Accord Australasia, described the Bill as ‘reckless’.

For example, its only legal effect for food labelling is to require FSANZ to draft a food standard and publish it on its website. In order for the States and Territories to enforce the standard, it would have to be determined in accordance with the

processes they have agreed to, which has not occurred. In short, the Bill is not enforceable as it operates outside of agreements between the Commonwealth, State, Territory and New Zealand Governments and its passage could lead to inconsistencies in labelling across these jurisdictions.

In relation to the Australian Consumer Law, the Bill will not change its legal effect. Currently, if a producer of food provided an ingredients list on the packet and the label omitted to mention palm oil when this was an ingredient, then it would breach section 33 regardless of whether the Bill became law or not. However, current labels do not breach section 33 because they do not claim to be a complete ingredients list and there is no legal requirement for them to fully list the ingredients either. The Bill would not change the operation of section 33 if it became law.

The Bill overlooks the fact that much of the legislative power in Australia resides in the States and Territories. In order to generate the benefits of a uniform national market, complex processes and negotiations are required to harmonise regulatory systems. In the case of consumer law, the Productivity Commission estimated in 2008 that the gain to the economy from uniformity is \$4.5 billion annually. The Bill simplistically overrides these important commercial arrangements without addressing the risks.

The Bill also places our international relationships at risk. The food regulation treaty between Australia and New Zealand states that neither party can amend their legislation regarding FSANZ without effectively consulting the other party. This has obviously not occurred. Further, singling out palm oil means that it is more discriminatory than necessary to fulfil a health or environmental objective. Australia would then be at risk of a trade dispute under WTO rules and Malaysia and Indonesia have already indicated that they are prepared to take this step.

Another negative feature of the Bill is that, separately to it, the Council of Australian Governments has initiated a review of food labelling in Australia. The Government released the review report, *Labelling Logic*, in January this year. Recommendation 12 states that, where sugars, fats or oils are added as separate ingredients in a food, the label should list the actual ingredients. This is already the approach in the United States and will most likely become law in the European Union.

The whole of Commonwealth, State, Territory and New Zealand Government response to *Labelling Logic*, which is under development, is expected to be considered by the Australia and New Zealand Food Regulation Ministerial Council on 9 December 2011. Given that a rigorous process is covering the Bill's subject matter, there is even less reason to proceed with it. Therefore, the committee has recommended that the Bill should not proceed.

I would like to thank the organisations and individuals that assisted the committee during the inquiry through submissions or participating in the hearing in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP
Chair



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Membership of the Committee

Chair	Ms Julie Owens MP
Deputy Chair	Mr Steven Ciobo MP
Members	Mr Scott Buchholz MP Mr Stephen Jones MP Dr Andrew Leigh MP Ms Kelly O'Dwyer MP Mr Craig Thomson MP

Supplementary	Mr Adam Bandt MP
Members	Mr Bruce Billson MP Mr Shayne Neumann MP Ms Laura Smyth MP

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Mr David Monk
Research Officer	Dr Phillip Hilton
Administrative Officer	Ms Natasha Petrovic



Terms of reference

On 7 July 2011, the Selection Committee asked the Committee to inquire into and report on the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011.

Under Standing Order 222(e), the House is taken to have adopted the Selection Committee's reports when they are presented.



List of abbreviations

ACL	Australian Consumer Law
AFGC	Australian Food and Grocery Council
CEO	Chief Executive Officer
COAG	Council of Australian Governments
FSANZ	Food Standards Australia New Zealand
IFC	International Finance Corporation
MINCO	Australian and New Zealand Food Regulation Ministerial Council
RSPO	Roundtable on Sustainable Palm Oil
WTO	World Trade Organisation



Recommendation

Recommendation 1

The House of Representatives should not pass the Food Standards Amendment (Truth in Labelling-Palm Oil) Bill 2010 because the legislation is flawed and would result in a range of unintended consequences. The House should note that an alternative and superior approach to addressing palm oil labelling is already under consideration.

On 9 December 2011 the Australian and New Zealand Food Regulation Ministerial Council will consider a whole-of-government response to the Report, *Labelling Logic: Review of Food Labelling Law and Policy*.

Recommendation 12 of this reports 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)).

The committee supports the Ministerial Council giving serious consideration to recommendation 12 of the report.

Introduction

Background

- 1.1 On 7 July 2011, the Selection Committee referred the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011 to the committee for inquiry and report.
- 1.2 The Bill was reported in the House of Representatives as being received from the Senate, and read a first time, on 4 July 2011.
- 1.3 A previous version of the Bill, the Food Standards Amendment (Truth in Labelling-Palm Oil) Bill 2009, was referred to the Senate Community Affairs Legislation Committee for inquiry and report, with a report date of August 2010. The Senate inquiry lapsed at the prorogation of the 42nd Parliament on 19 July. After the 2010 election, the Bill was reintroduced and the Senate recommenced the inquiry with the Senate committee reporting in June 2011. The Senate amended and passed the Bill after the committee report was tabled.

Purpose and overview of the Bill

- 1.4 The stated purpose of the Bill is to provide for the labelling of palm oil in food and other products.
- 1.5 This Bill's intention is to give consumers information to allow them to make an informed choice about whether they want to purchase or consume a product containing palm oil.

- 1.6 The Bill amends the *Food Standards Australia New Zealand Act 1991* to require Food Standards Australia New Zealand (FSANZ) to develop and approve labelling standards to be used by food producers, manufacturers and distributors of food containing palm oil. It also seeks to amend the *Competition and Consumer Act 2010* to include the use of palm oil in the characteristics of any goods for the purposes of misleading conduct as to the nature of goods.
- 1.7 In relation to food labelling, the key provision of the Bill is that:
- The Authority 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.
- 1.8 In relation to the Australian Consumer Law, the key provision of the Bill is to insert the following into the misleading conduct offence:
- For the purposes of subsection (1) [the misleading conduct offence], the characteristics of any goods include the use of palm oil in the goods or to produce the goods.

Legislation that the Bill seeks to amend

The Australian food standards regime

- 1.9 The Australian food regulatory system is a shared undertaking between the Commonwealth and States and Territories. To operate, the system requires multiparty negotiation and consultation between these governments. Further, Australian food standards are also, as a matter of principle, coordinated with New Zealand.
- 1.10 The system separates policy decision making from the detailed task of developing food standards. The Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council) is responsible for food regulation policy in Australia and New Zealand, while an independent agency (FSANZ) develops food standards and administers the Australia New Zealand Food Standards Code.
- 1.11 The system draws its authority from three separate legal instruments:

- the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) which establishes the Food Standards Australia New Zealand (FSANZ) as the regulatory authority for food;
 - the Food Regulation Agreement, to which the Commonwealth, State and Territory governments are parties; this establishes a regulatory framework for food that would be consistent across all Australian States and Territories, as well as establishing the Australia and New Zealand Food Regulation Ministerial Council (the Council), which provides oversight of the food regulatory system; and
 - the Australia New Zealand Joint Food Standards Treaty which establishes a system of joint food standards to operate across both nations.
- 1.12 Food standards are developed by FSANZ following Council policy and the FSANZ Act. They are spelt out in the Australia New Zealand Food Standards Code (the Code) whose legal authority is provided by State, Territory and New Zealand legislation.¹
- 1.13 The purpose of FASNZ is set out as follows in the FSANZ Act, section 18:
- (1) The objectives (in descending priority order) of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures are:
 - (a) the protection of public health and safety; and
 - (b) the provision of adequate information relating to food to enable consumers to make informed choices; and
 - (c) the prevention of misleading or deceptive conduct.
- 1.14 Though ownership of the system is shared, compliance is left to the State and Territory health departments which enforce the Code.

Australian consumer law (ACL)

- 1.15 The cooperative approach to food standards also applies to consumer law. In October 2008, the Council of Australian Governments (COAG) agreed to a new national consumer policy framework which was intended to enhance consumer protection, reduce regulatory complexity for

1 Department of Health and Ageing, *Submission 15*, pp. 2-3.

businesses and encourage the development of a seamless national economy.²

1.16 The ACL was intended to support COAG's *National Partnership Agreement to Deliver a Seamless National Economy*, which aimed at reducing regulatory duplication and inconsistency. To do this, the ACL replaces specific provisions in at least 20 overlapping laws at both the Commonwealth and State and Territory level.³ Any changes to the ACL by the Commonwealth, for example, would require that the States and Territories also amend their various laws to maintain the national consistency of the system. Importantly, the Agreement states: 'This Agreement may be amended only by the unanimous agreement of all the Parties'.⁴

1.17 The purpose of this policy framework for consumer protection is to improve consumer wellbeing through empowerment and protection, to foster competition and to enable the confident participation of consumers in markets in which both consumers and suppliers alike trade fairly. This purpose is in turn supported by six operational objectives:

- to ensure that consumers are sufficiently well-informed to benefit from and stimulate effective competition;
- to ensure that goods and services are safe and fit for the purposes for which they were sold;
- to prevent practices that are unfair;
- to meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage;
- to provide accessible and timely redress where consumer detriment has occurred; and
- to promote proportionate, risk-based enforcement.

1.18 The Australian Consumer Law took effect in January 2011. It is too soon to quantify its benefits, but the Productivity Commission estimated that Australian consumers and businesses will obtain benefits of up to \$4.5 billion per annum. These benefits will accrue by increasing the capacity of consumers to make informed decisions, reduced compliance

2 Intergovernmental Agreement For The Australian Consumer Law (July 2009); for the full text see http://www.consumerlaw.gov.au/content/the_acl/downloads/acl_iga.pdf.

3 Treasury, *Submission 22*, p. 2.

4 Intergovernmental Agreement For The Australian Consumer Law (July 2009), p. 5.

costs for business, enhanced productivity and innovation and reduced transaction costs.⁵

Developments prior to the Bill

Labelling Logic: Review of Food Labelling: Law and Policy (2011)

- 1.19 Separately to the Bill, the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council or MINCO) will respond to the recommendations of the review on 9 December 2011. In particular, it will consider a whole of Commonwealth, State, Territory and New Zealand Government response to the report, which the Department of Health and Ageing is currently coordinating.
- 1.20 In October 2009, the MINCO announced a Review of Food Labelling Law and Policy. An independent expert panel, chaired by former Australian Health Minister Dr Neal Blewett AC, was appointed to conduct the review. He was joined on the panel by professionals with backgrounds in food industry communications, marketing and corporate affairs, consumer behaviour and food and nutrition policy.
- 1.21 The terms of reference of the review required that the panel:
- examine the policy drivers impacting on demands for food labelling;
 - consider what should be the role for government in the regulation of food labelling and what principles should guide decisions about government regulatory intervention;
 - consider what policies and mechanisms are needed to ensure that government plays its optimum role;
 - consider principles and approaches to achieve compliance with labelling requirements and appropriate and consistent enforcement;
 - evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front-of-pack labelling against terms of reference 1–4 above; and
 - make recommendations to improve food labelling law and policy.
- 1.22 The review received approximately 6,600 submissions and heard from approximately 550 attendees at public consultation sessions.
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5 Treasury, *Submission 22*, p. 2.

- 1.23 The review wrote up its findings in its report, *Labelling Logic: Review of Food Labelling: Law and Policy (2011)* and made 61 recommendations. The most important for present purposes are:

Recommendation 2: That food labelling policy be guided by an issues hierarchy in descending order of food safety, preventative health, new technologies and consumer values issues. Regulatory action in relation to food safety, preventative health and new technologies should primarily be initiated by government and referenced in the Food Standards Code. Regulatory action in relation to consumer values issues should generally be initiated by industry and referenced to consumer protection legislation, with the possibility of some specific methods or processes of production being referenced in the Food Standards Code.

Recommendation 12: 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)).

- 1.24 The Department of Health and Ageing is coordinating the Government's response to the *Labelling Logic* review of food labelling, which is expected to be considered by the Ministerial Council on 9 December 2011.

Senate inquiry

- 1.25 The Senate committee reported on an earlier version of the Bill. The differences between the two versions of the Bill are:
- the earlier Bill had a second purpose of encouraging the use of certified sustainable palm oil to help protect wildlife habitat;
 - the earlier Bill prescribed the labelling of palm oil if it had been certified as sustainable in accordance with regulations; and
 - the earlier Bill did not seek to amend the Australian Consumer Law.
- 1.26 The Senate committee made the following specific recommendations:
- FSANZ consider whether paragraph 18(1)(b) [stipulating that one of the authority's objectives is to help consumers make informed choices] should be read independently of paragraph 18(1)(a) of its Act [requiring the authority to protect public health and safety] in assessments of food labelling applications.

- In the case of palm oil labelling, that evidence placed before this committee be taken by FSANZ as one indication that a cost-benefit analysis may identify significant community benefits that would be gained from the provision of sought-after food labelling information, while possibly involving limited costs.
 - The government fully consider Recommendation 12 of the *Review of Food Labelling Law and Policy (2011)*.
- 1.27 The **Senate committee recommended that the Bill not be passed**. In particular, the Senate committee noted that only FSANZ could reach an appropriate judgement. The committee also observed that the level of community interests indicated that there are potentially significant benefits to labelling palm oil. The Senate committee concluded that voluntary actions were preferable to those in the Bill.
- 1.28 The committee minority report recommended that the Bill be passed to support consumers' right to know what they are eating and to protect the habitat of orangutans.
- 1.29 After the committee report was tabled, the Senate amended the Bill. The amendments were:
- to remove the reference to sustainable palm oil so that all palm oil would be required to be labelled. This was done due to concerns expressed in the Senate about the difficulty of ascertaining whether the palm oil in a product was produced from a sustainable source;
 - to include a requirement that the Australian Consumer Law (ACL) specifically cover palm oil as a characteristic of a product. This was done to ensure that the ACL covered palm oil and was only to apply to products manufactured 12 months after the commencement of this provision to give an implementation period for producers; and
 - to remove one of the purposes of the Bill, which related to certified sustainable palm oil, and to broaden the consumer information purpose to apply to palm oil in goods, not just foods. This was done to ensure consistency with the other amendments.⁶

The story of palm oil

- 1.30 Global demand for palm oil has increased dramatically over the past four decades. The World Bank reports that world demand for palm oil was

⁶ Senator Nicholas Xenophon, *Senate Hansard*, 23 June 2011, pp. 3650, 3653-54.

approximately 2 million tonnes in 1970 and in 2010 grew to over 50 million tonnes.⁷

- 1.31 The reason for this growth is that palm oil has considerable advantages for both its producers and its end-users. The palm oil plant is very high-yielding. The Malaysian Ministry of Plantation Industries and Commodities advised the committee that the palm oil plant has an average yield of 4.1 tonnes per hectare per year. This is much higher than other vegetable oil crops. For example, rapeseed and sunflower plants yield 0.75 and 0.5 tonnes per hectare per year respectively.⁸ The Australian Institute of Horticulture advised that, unlike many other oil crops, the oil palm can grow on natural rainfall and does not require intensive irrigation or cultivation.⁹
- 1.32 Palm oil is also very attractive to the food industry. Professor Sinclair of Deakin University advised the committee that it is a low cost oil that is solid at room temperature. This latter property is important because it prevents the oil leaking out of food over time. The two types of oils that have this property are trans fatty acids and saturated fats. Trans fatty acids have been commonly used in the United States where surplus soya bean oil was partially hydrogenated to make it more solid at room temperature. Australia has traditionally used saturated fats such as pig fat (lard) and beef fat (tallow), but palm oil is now much more common.¹⁰

Conduct and scope of the inquiry

- 1.33 The objective of the inquiry is to scrutinise the technical adequacy of the Bill and its ability to deliver the policy intent.
- 1.34 This inquiry followed an inquiry by the Senate Community Affairs Legislation Committee into the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010. The Bill that the Senate committee examined was similar to the Bill in the current inquiry and the Senate committee received over 500 submissions. In order to conduct the inquiry at the least inconvenience to the public, the committee agreed that it would take into account the submissions made to the Senate committee
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7 The World Bank and IFC, *The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector*, 31 March 2011, p. 11, <<http://www.ifc.org/ifcext/agriconsultation.nsf/Content/KeyDocuments>> viewed 29 August 2011.

8 *Submission 18*, p. 4.

9 *Submission 34*, p. 3.

10 Professor Andrew Sinclair, *Committee Hansard*, Canberra, 19 August 2011, pp. 33-35.

for this inquiry. Organisations and individuals could make additional submissions if they so wished.

- 1.35 Details of the inquiry were placed on the committee's website. A media release announcing the inquiry and seeking submissions was issued on Wednesday, 3 August 2011. Advertisements for the inquiry were placed in the *Australian* on Friday, 5 August 2011 and Thursday, 11 August 2011.
- 1.36 Thirty-seven submissions and two supplementary submission were received and are listed at Appendix A. Seven exhibits were received which are listed at Appendix C.
- 1.37 Public hearings were held in Canberra on Thursday 18 August 2011 and Friday 19 August 2011. A list of the witnesses who appeared at the hearing is at Appendix B. The submissions and transcript of evidence were placed on the committee's website at <http://www.aph.gov.au/house/committee/economics/index.htm>.

Analysis of the Bill

- 2.1 This chapter analyses the Bill in relation to five key issues that were raised throughout the inquiry. These were:
- its unintended consequences;
 - whether the Bill properly informs consumer choices in relation to health risks;
 - whether the Bill properly informs consumer choices in relation to deforestation;
 - whether costs to industry would increase and by how much; and
 - its effects on international trade.
- 2.2 For some of these issues, the evidence was contradictory and the committee was not able to draw a definitive conclusion. Where the evidence on an issue was clear, the arguments opposed the Bill. In no case did the committee find clear evidence in support of the Bill.

Unintended consequences

Background

- 2.3 The Bill seeks to amend two Acts: the *Food Standards Australia New Zealand Act 1991* and the Australian Consumer Law under the *Competition and Consumer Act 2010*. Both Acts have been the product of a great deal of negotiation and agreement between the Commonwealth and the States and Territories.

- 2.4 The Department of Health and Ageing advised the committee that the reason for this approach for food standards is that the Commonwealth does not have power under the Constitution to legislate for food. Regulation (including legislating) and enforcement in this area is primarily the responsibility of the States and Territories. However, by setting up an agreed national system, which has taken ‘many decades’, Australia now enjoys the benefits of nationally consistent food standards. The main cost of this system is the complexity required to coordinate and take into account the views of the different jurisdictions.¹
- 2.5 As the Department of Health and Ageing noted, the same reasoning applies to the amendments to the Australian Consumer Law.² Treasury stated that this legislation originated in a Productivity Commission report in 2008, which estimated that the national economy would benefit by up to \$4.5 billion a year if the different consumer laws across the country were standardised. The benefits would accrue through such mechanisms as reduced compliance and transaction costs.³
- 2.6 In evidence, Treasury confirmed that many firms operate at a national level, stating:
- We have all been round long enough to know that the economy has changed markedly since 1900. We basically deal in national markets.⁴
- 2.7 In other words, the two Acts are coordinating legislation that the States and Territories follow and support because they are involved in policy development, and there are substantial benefits in having a nationally consistent approach.

Analysis

- 2.8 Treasury and Food Standards Australia New Zealand (FSANZ) both gave evidence to the committee that the Bill would be of limited effect. In the case of FSANZ, this was because it is only changing a coordinating Act and that the processes under the various pieces of legislation that trigger legal effect have not been complied with:

The first thing to note if this bill were passed, which would oblige FSANZ to prepare the standard, is that the standard would not go

1 Ms Megan Morris, *Committee Hansard*, Canberra, 18 August 2011, p. 2.

2 *Submission 15*, p. 5.

3 *Submission 22*, pp. 1-2.

4 Mr Bruce Paine, *Committee Hansard*, Canberra, 18 August 2011, p. 32.

into the Australia New Zealand Food Standards Code, because it has not been developed under the process that has been agreed through the intergovernmental agreements. Essentially that standard would go onto the website and would sit there. In that respect there would be no enforcement of the standard because States and Territories would not have adopted it. The mechanism by which they adopt standards is that, once they go into the code, then they are automatically adopted into State and Territory legislation under their food acts. In this instance that would not happen because the standard would not be in the code.⁵

- 2.9 In the case of Treasury, the Bill would be of limited effect because it would not materially change the meaning of the current section 33 of the Australian Consumer Law, which is the misleading conduct provision:

Our submission mentioned that the current section 33 is already sufficiently broad enough to capture characteristics, including palm oil being a characteristic of a good. Our view is that you really do not need to amend section 33 to capture palm oil as a particular characteristic of a good.⁶

Can I just add there that my understanding is that if a good – talking here about food – listed a list of ingredients and the good actually included palm oil, it would be misleading under the current section 33 if that list did not indicate that it included palm oil. Just to repeat that: if the good lists its ingredients and it actually contains palm oil, it would be misleading to omit palm oil from that list under the current law.⁷

- 2.10 Therefore, if a producer of food provided an ingredients list on the packet and the label omitted to mention palm oil when this was an ingredient, then it would breach section 33 regardless of whether the Bill became law or not. However, current labels do not breach section 33 because they do not claim to be a complete ingredients list and there is no legal requirement for them to fully list the ingredients either. The Bill would not change the operation of section 33 if it became law.
- 2.11 Further, the Bill has the potential to jeopardise the benefits gained from nationally consistent legislation, particularly in relation to the Australian Consumer Law. Treasury stated in evidence:

5 Mr Steve McCutcheon, *Committee Hansard*, Canberra, 18 August 2011, p. 32.

6 Ms Danielle Staltari, *Committee Hansard*, Canberra, 18 August 2011, p. 29.

7 Mr Bruce Paine, *Committee Hansard*, Canberra, 18 August 2011, p. 29.

There is a potential consequence if the Commonwealth parliament passed the law and one or more of the States or Territories decided not to apply that. That could result in individuals and unincorporated businesses in those jurisdictions being subject to a different set of requirements. As I understand it, there was a brief period 20 or 30 years ago where the consumer law was quite homogeneous across the country, and quite quickly that unravelled.⁸

- 2.12 The committee also notes that the current food labelling and consumer law systems have a great deal of support from industry. For example, the Australian Food and Grocery Council mentioned in evidence that the Bill has ‘circumvented the process,’ that ‘The process is really quite clear’ and that FSANZ had already considered an application from the public to specifically label palm oil and rejected it.⁹ In relation to the Australian Consumer Law, Accord Australasia stated that, ‘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’. It also described the Bill as a ‘willy-nilly piecemeal amendment’ of an ‘important micro-economic reform law’.¹⁰ The Bill has increased risk for food and cosmetic producers because it has bypassed widely known and supported regulatory systems.
- 2.13 Finally, the committee observes that the current system is already considering labelling specific vegetable oils through the *Labelling Logic* review. Implementing recommendation 12 of the review would make practice in Australia similar to that in Canada and the United States. The Bill is superfluous in this context.

Conclusion

- 2.14 One of the strongest reasons to reject the Bill is that it interferes with stable, well known processes that deliver uniformity to Australian consumers and businesses. The Bill does not recognise the regulatory systems that give Australia uniformity while remaining true to our constitutions, where a great deal of lawmaking power rests with the States and Territories.
- 2.15 The same food labelling system that the Bill seeks to override is already considering labelling individual vegetable oils. The committee is of the view that this process should run its course.

8 Mr Bruce Paine, *Committee Hansard*, Canberra, 18 August 2011, p. 28.

9 Ms Kate Carnell, *Committee Hansard*, Canberra, 18 August 2011, p. 17.

10 *Submission 29*, p. 4.

Consumer choices about health risks

Background

2.16 The Palm Oil Action Group stated that the Bill was worthy of support because it would allow consumers to determine if a product has high levels of saturated fat. The Group also argued that higher intake of saturated fat is associated with increased rates of diabetes, heart attacks and angina.¹¹

Analysis

2.17 The counter argument presented to the committee is that current labelling standards already require that the level of saturated fats be included in labels and that it is an individual's total intake of saturated fats that is the most relevant to health outcomes. Sanitarium made this point, as did Professor Sinclair of Deakin University and the Department of Health and Ageing.¹²

2.18 Further, Sanitarium raised the possibility that, if palm is the only oil that is specifically labelled, then consumers may make purchasing decisions based only on this criterion, without considering the more important, general question of the total amount of saturated fats in a product:

The TILPO Bill would single out [palm] oil, even if it were added at nutritionally insignificant levels. A consumer driven to avoid palm for 'health' reasons may end up choosing products higher in saturated fat than one containing a small amount of palm oil. Not all saturated fats are the functional equivalent of palm oil, and for that reason are not necessarily nutritionally equivalent at the 'functional' level of addition.¹³

2.19 In fact, palm oil has fewer health implications than other oils that are high in saturated fats. The Department of Health and Ageing advised the committee that, 'There are no known safety issues with palm oil'.¹⁴ This contrasts with other oils such as peanut, soybean or sesame. FSANZ stated

11 *Submission 13*, p. 2.

12 *Submission 26*, p. 5; Professor Andrew Sinclair, *Committee Hansard*, Canberra, 19 August 2011, p. 35; Ms Megan Morris, *Committee Hansard*, Canberra, 18 August 2011, p. 6.

13 *Submission 26*, p. 5.

14 Ms Megan Morris, *Committee Hansard*, Canberra, 18 August 2011, p. 6.

in evidence that these are specifically labelled because they represent an allergy risk.¹⁵

Conclusion

2.20 The committee concludes that there is no particular health reason to specify palm oil alone on food labels if other saturated fats are not labelled in the same way. What is important for health outcomes is the amount of saturated fat in the food and the amount of particular foods that consumers choose to eat. Specifying palm oil singly may lead consumers to focus on one ingredient at the expense of total intake of saturated fats, when the latter is the relevant factor for health outcomes. Therefore, the Bill may have the result of distorting consumers' choices about their health.

Consumer choices about deforestation

Background

2.21 One reason for popular support for the Bill is the claim that Malaysia and Indonesia are clearing forest to increase palm oil production. The Australian Orangutan Project stated that the Sumatran orangutan is critically endangered with less than 6,300 alive in the wild. The Bornean orangutan is endangered with 55,000 alive in the wild. Eighty percent of the current population live outside protected areas. Clearing forest will reduce food for orangutans and reduce the population.¹⁶ As the Taronga Conservation Society Australia stated in evidence, 'the only chance for survival, of course, is protection of habitat'.¹⁷

2.22 This issue has generated a great deal of concern in the community. In 2009, Zoos Victoria ran a public campaign in support of protecting the native habitat of orangutans and the need to label palm oil in food. The campaign produced approximately 70,000 online responses where individuals wanted to have palm oil labelled in order to prevent the loss of orangutan habitat. Zoos Victoria also received approximately 164,000 cards signed by individuals to the same effect.¹⁸

15 Mr Steve McCutcheon, *Committee Hansard*, Canberra, 18 August 2011, p. 2.

16 *Submission 3*, pp. 3-4.

17 Mr Cameron Kerr, *Committee Hansard*, Canberra, 19 August 2011, p. 13.

18 Ms Jennifer Gray, *Committee Hansard*, Canberra, 19 August 2011, p. 15.

2.23 The Palm Oil Action Group described the business model behind palm oil production:

Palm oil is one of the most profitable crops in the world, mainly because the true cost of the degradation of the environment is not costed into it. As a palm oil company, your first preference is to get some beautiful rainforest, chop down the trees and sell them for a massive price and then plant palm oil on that land. Your second choice, however, is to take already degraded land and plant palm oil on that ...

... they can chop down the trees and sell them for a terrific price, as the introduction to that bit of commerce; so they have a large amount of money in the bank to then go and plant the palm oil trees with ...

[Pulp paper and rubber are] nowhere near as profitable, which is why there is so much palm oil and so little of all the other things. In fact, in Malaysia virtually all the rubber plantations have now been planted out as palm oil plantations and, no, the pulp paper industry is nowhere near as profitable at the moment as the palm oil industry.¹⁹

2.24 In other words, conservation groups argued before the committee that economic forces and development are reducing natural habitat for orangutans and reducing their numbers in the wild. The Institute of Public Affairs interpreted events differently. They suggested that poverty was the underlying cause of deforestation as farmers seek to raise their incomes through commodities that have international demand.²⁰

2.25 These developments have encouraged industry to develop the Roundtable on Sustainable Palm Oil (RSPO) on a voluntary basis. The Roundtable grew out of discussions between the World Wildlife Fund and industry between 2001 and 2003. In 2004, the Roundtable was established under Swiss law. It is formally located in Zurich with offices in Kuala Lumpur and Jakarta. The Roundtable's mission is to, 'transform markets to make sustainable palm oil the norm'.²¹

2.26 There is a number of criteria required to classify palm oil as sustainable. In evidence, the Palm Oil Action Group stated that one of the main criteria is

19 Mr Tony Gilding, *Committee Hansard*, Canberra, 19 August 2011, pp. 44-45.

20 *Exhibit 3*, p. 13.

21 RSPO, 'History,' 2009, <<http://www.rspo.org/?q=page/10>>; RSPO, 'Vision, Mission and Aspirations,' <<http://www.rspo.org/?q=page/16>>, both viewed 6 September 2011.

that land cannot be cleared for planting after a certain date.²² Documentation produced by the Roundtable indicates that primary forest or areas of high conservation values cannot be cleared for palm oil production after November 2005.²³ The principal goal for many firms and industry groups during the inquiry is to use sustainable palm oil by 2015. In most cases this statement was made with the caveat of 'supplies permitting'.²⁴

Analysis

2.27 This aspect of the inquiry was subject to a high degree of factual disagreement. For example, the Malaysian Palm Oil Council stated in evidence that a large degree of forest will be preserved:

... for every one hectare of land developed for oil palm, four hectares of forest are preserved. This is due, in large part, to the remarkable properties of the oil palm being high yielding but, more importantly, to Malaysia's decision to ensure that its environment would be preserved in perpetuity for our people, even though we know that revenue from forest land is 30 times less than revenue from agricultural land.

We hope that you recognise the commitment for what it is: an unsolicited promise to curtail or sacrifice economic development for the national and world good. We set a high standard for ratio of forest to total land area in our country of at least 50 per cent.²⁵

2.28 Conversely, the Taronga Conservation Society Australia argued that the 50 per cent figure does not fully reflect how the land will be used in future:

A report from the Malaysian Timber Council lists that, of the total forest area in Malaysia, 74 per cent of that land is allocated as permanent reserved forest. So that sounds good. However, if we look at the detail, the report lists that the majority of this permanent reserved forest – 78 per cent of it or 11 million hectares – is actually allocated to a term called 'production forests'

22 Mr Tony Gilding, *Committee Hansard*, Canberra, 19 August 2011, p. 44.

23 RSPO, *RSPO Principles and Criteria for Sustainable Palm Oil Production: Including Indicators and Guidance*, October 2007, <<http://www.rspo.org/sites/default/files/RSPO%20Principles%20&%20Criteria.pdf>> viewed 6 September 2011.

24 For example, George Weston Foods, *Submission 8*, p. [1]; Unilever, *Submission 28*, p. [2]; Campbell Arnott's, *Submission 35*, p. [1]; Australian Food and Grocery Council, *Submission 27*, p. 4.

25 Dr Yusof Basiron, *Committee Hansard*, Canberra, 18 August 2011, pp. 24-25.

for growth and harvesting for timber export. So the landmass and the vast tracts of production forests are grouped together with the lesser areas of protected forests. This produces some confusing statistics and can cause us to misunderstand the impact on the species that rely on these habitats. The source for that information is Malaysia: sustainable forest management, March 2007, page 7, the Malaysian Timber Council. So that is the Timber Council's own understanding of how the reserved forest is split up.²⁶

2.29 Another example of the wide difference in views relates to the number of orangutans in the wild. The Malaysian Palm Oil Council stated that numbers are increasing, whereas the Australian Orangutan Project stated that numbers are decreasing.²⁷

2.30 The effectiveness of the RSPO was also the subject of debate. The Palm Oil Action Group argued that the system does not work in practice because of the difficulty in drawing a distinction between an independent audit of compliance with RSPO requirements and simply being a member of the RSPO:

But, importantly, it needs to be certified by an independent body and not by the RSPO themselves. This is one of the big problems – people are claiming that their palm oil is okay because they are members of the RSPO and, so far, the RSPO has expelled nobody.²⁸

2.31 Industry's response has been that it has taken some time to develop the appropriate production and supply chains to commence large scale production of palm oil. The New Zealand Food and Grocery Council stated:

Efforts to date have been criticised but the momentum has taken time to build and in 2010 the volume of certified sustainable palm oil doubled from the previous year. If this pace of sustainability continues, the majority of palm oil production could be certified as sustainable within 5 years.²⁹

2.32 The Department of Innovation, Industry, Science and Research advised that Roundtable certified sustainable palm oil accounts for eight per cent of world output.³⁰ Given that oil palms take a few years to start bearing

26 Mr Cameron Kerr, *Committee Hansard*, Canberra, 19 August 2011, p. 13.

27 Dr Yusof Basiron, *Committee Hansard*, Canberra, 18 August 2011, p. 24; Mr Leif Cocks, *Committee Hansard*, Canberra, 19 August 2011, pp. 36-37.

28 Mr Tony Gilding, *Committee Hansard*, Canberra, 19 August 2011, p. 44.

29 *Submission 12*, pp. 3-4.

30 *Submission 23*, p. 7.

fruit, it would appear that this 8 per cent figure is likely to grow in the next few years.

- 2.33 A final case of a divergence of views relates to the economic benefits of palm oil production in Malaysia and Indonesia. World Growth, an international consultancy, argued that the World Bank has used palm oil as a way of alleviating poverty:

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.³¹

- 2.34 On the other hand, Taronga Conservation Society Australia advised the committee that the World Bank's investment arm, the International Finance Corporation (IFC), had placed a moratorium on palm oil investments due to 'very concerning practices by a large palm oil producer'.³²

- 2.35 In March 2011, the World Bank and the IFC released their new policy on investing in palm oil, which ensures that investment decisions will fully incorporate social and environmental considerations, which are among these organisations' goals. The report also states that, 'The industry has played a significant role in generating export earnings and reducing poverty in the producing countries'. The report is supportive of the role of agriculture more generally in reducing poverty. It states, 'growth originating in agriculture has been three times more effective in raising the incomes of the poor than growth generated from other sectors'.³³

Conclusion

- 2.36 Given the shift by palm oil producers, food producers and the World Bank towards sustainable palm oil, in the committee's view, the Bill's focus on the product palm oil, whether produced sustainably or not, is heavy

31 *Submission 30*, p. 2.

32 Mr Cameron Kerr, *Committee Hansard*, Canberra, 19 August 2011, p. 14.

33 The World Bank and IFC, *The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector*, 31 March 2011, p. 10, <<http://www.ifc.org/ifcext/agriconsultation.nsf/Content/KeyDocuments>> viewed 29 August 2011.

handed and ignores the significant work being done to move towards sustainable palm oil by 2015, supplies permitting.

- 2.37 The committee is of the view that the Bill would not affect deforestation of orangutan habitats because it will not act on the factors driving deforestation. Deforestation is occurring because Indonesia and Malaysia wish to improve their living standards, and one of the most effective means of doing so is through agriculture. Further, one of the most commercially successful crops in the tropics is palm oil.
- 2.38 While the committee is very much aware of community support in preserving orangutan habitats, the Bill is unlikely to achieve that aim. The committee notes that the Australian Government already funds projects over \$300 million, which seek to address deforestation and illegal logging in South East Asia.³⁴

Costs to industry

Background

- 2.39 A common theme during the inquiry was that the Bill would increase costs to industry due to the work required, within a relatively short space of time, to change labels on a large number of products. The Australian Food and Grocery Council gave an overall view of the costs to industry:

Firstly, for people to change their labels, the costs range from about \$5,000 for a minor change to about \$15,000 for a major change. In many cases this could be a minor change, depending on the size of the label, how much you have to rejig it, all that sort of stuff. Of the 30,000 products on supermarket shelves in Australia, a very large percentage has palm oil. Some already are labelled, some are not. We do not have the figures on exactly how many are and how many are not, but it is a new cost.³⁵

- 2.40 Industry representatives from the Australian Chamber of Commerce and Industry gave a small business view of the potential costs:

When the last mandated labelling changes were put through, we ran surveys, both nationally through AFGC and locally through the WA Chamber of Commerce and Industry, and the result there

34 Department of Foreign Affairs and Trade, *Submission 32*, p. 1.

35 Ms Kate Carnell, *Committee Hansard*, Canberra, 18 August 2011, p. 15.

was quite horrifying. The cost of the labelling change was, on average, \$60,000 to each small business concerned. Across the nation, it was around half a billion dollars. They are great concerns for industry, and they should be of great concern to the committee.³⁶

Analysis

- 2.41 The committee accepts that a one-off label change at short notice can have significant costs for industry and that label changes are a serious matter. However, a number of factors need to be taken into account. For example, the committee notes that the cost of a minor change to a label was costed by consultants for FSANZ in 2008. For eight out of the 11 types of packaging considered in the study, the cost of a minor change was between \$3,000 and \$4,000. For aluminium cans, plastic bottles, and plastic jars, the cost approaches \$5,000.³⁷
- 2.42 Further, the cost of changing a label depends on the lead time in which industry has to act. In Schedule 1, the Bill gives six months for FSANZ to develop a food standard requiring the labelling of palm oil. Schedule 2 of the Bill, relating to amendment of the Competition and Consumer Act will apply to goods manufactured after 12 months starting from the date of assent. This compares with the two year period that the Food and Grocery Council states is the standard minimum time.³⁸
- 2.43 The committee also notes that businesses can turn the cost of a minor label change into an opportunity to update labels more comprehensively. While there is still a cost to businesses, they can limit it if their wider business strategy permits. This argument is similar to comments made by the CEO of Taronga Conservation Society:

I have to let you know that, throughout the 1990s, I worked for three multinational organisations in consumer marketing roles, consumer health care and consumer cosmetics – Wella, Schwarzkopf and Faulding. I can confirm that, during this time, package labelling was a useful marketing tool for me and would often include short-term promotional offers for special information – 'new improved' and all those sorts of things which I

36 Mr Iain Macgregor, *Committee Hansard*, Canberra, 18 August 2011, p. 35.

37 PriceWaterhouseCoopers, *Cost Schedule for Food Labelling Changes (Food Standards Australia New Zealand)*, *Final Report*, 7 March 2008, p. 3, <[http://www.foodstandards.gov.au/_srcfiles/Final%20report-%20FSANZ%20-%207%20March%202008%20\(2\).pdf](http://www.foodstandards.gov.au/_srcfiles/Final%20report-%20FSANZ%20-%207%20March%202008%20(2).pdf)> viewed 29 August 2011.

38 *Submission 27*, p. 6.

am sure that you see on a regular basis as you go through the aisles. Today – a luxury that I did not have when I was in the industry – we have digital technology, which has made the process even less of an impost to consumer packaged goods companies and their marketing departments.³⁹

Conclusion

- 2.44 The committee is of the view that the cost of a label change must be compared against the benefits that society expects to gain from the improved information to consumers. For example, if in the unlikely event a common food ingredient is found to have adverse health effects, then the committee would expect that food labelling standards would be changed in short order and products recalled. While the costs to business would be considerable, they would be far exceeded by the benefits to consumers.
- 2.45 It is noted that the food sector is competitive and businesses must constantly monitor costs. Industry groups have advised that the Bill would result in compliance costs due to the need to re-label certain food and groceries. While this point is noted it is not the major reason why the committee is opposed to the Bill.
- 2.46 As stated earlier, the committee is of the view that there is considerable doubt that the Bill will deliver its required effect. Further, there are two very important reasons why the committee opposes the Bill. These are its unintended consequences, discussed earlier, and its effects on international trade, which are discussed below.

International trade

Background

- 2.47 There were two concerns raised about the Bill under this category. The first was that it potentially breached a food agreement made in 1995 with New Zealand. The Australian Food and Grocery Council, the New Zealand Food and Grocery Council, the New Zealand High Commission and the Department of Health and Ageing all raised this in their

39 Mr Cameron Kerr, *Committee Hansard*, Canberra, 19 August 2011, p. 14.

submissions.⁴⁰ Article 4(4) of the food regulation treaty⁴¹ between the Governments of Australia and New Zealand states:

Australia shall not introduce any amendments to the Australian legislation establishing the Authority, or move government amendment to that legislation, without effective consultation with New Zealand during their development. Australia shall use its best endeavours, including reflection of New Zealand's position in any relevant papers for the Australian Commonwealth government, to reach agreement with New Zealand on these, and any other, amendments to the Australian legislation.

2.48 Article 4(5) applies with similar effect to New Zealand. Article 5(3) states:

Subject to Annexes D and E of this Agreement, neither Member State shall by legislation or by other means establish or amend a food standard falling within the scope of this Agreement other than in accordance with this Agreement.

2.49 The second concern was that the Bill breaches Australia's commitments under the World Trade Organisation (WTO). Accord Australasia, the Indonesian Palm Oil Commission, the Department of Foreign Affairs and Trade, and World Growth all raised this in their submissions.⁴²

2.50 The basis for this claim is that the Bill only requires the labelling of palm oil and not other oils. Therefore, it may be more trade restrictive than necessary to fulfil a *legitimate objective*. The Department of Foreign Affairs and Trade advised that a legitimate objective should have a:

... domestically focused nexus and can include: prevention of deceptive practices in Australia; protection of human, animal or plant life or health in Australia; or protection of the Australian environment.⁴³

2.51 The Department of Health and Ageing advised that the European Union is in the process of mandating more comprehensive labelling of vegetable oils, in particular that the vegetable origin of the oils used (palm, coconut etc.). This is also a current requirement in the United States and Canada.⁴⁴ This approach is similar to that proposed in recommendation 12 of the *Labelling Logic* review.

40 *Submission 27*, p. 7; *Submission 12*, p. 2; *Submission 24*, p. 2; *Submission 15*, p. 4.

41 The full title is: *Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System*, done at Wellington 5 December 1995.

42 *Submission 29*, p. [8]; *Submission 4*, p. 1; *Submission 32*, pp. 1-2; *Submission 30*, p. 2.

43 Australian Oilseeds Federation, *Submission 32*, pp. 1-2.

44 *Submission 15*, p. 5.

2.52 This type of provision does not raise trade issues because it does not discriminate between different types of vegetable oils.⁴⁵ Although this approach solves one problem, it should be kept in mind that it would require additional record keeping for businesses and their suppliers because chemical analysis cannot distinguish the vegetable origin of an oil once processing takes place. It would also reduce sourcing flexibility for producers.⁴⁶

Analysis

2.53 The position in relation to the food regulation treaty is clear. The committee is aware of no consultation between the Australian and New Zealand Governments about the Bill. At the minimum, it would appear that this should occur before the Bill proceeds any further in the Parliament. The treaty supports economic, social and political benefits that flow from increased trade with New Zealand, with which Australia has a very close and highly valued relationship. The importance of this relationship far outweighs the potential gains from the Bill.

2.54 The Department of Health and Ageing is coordinating the Government's response to the *Labelling Logic* review of food labelling, which is expected to go to the Ministerial Council on 9 December 2011. New Zealand is represented on this body.⁴⁷ The committee would expect that, if the Government decided to accept recommendation 12 of the review, then the appropriate consultations with New Zealand would occur as a matter of routine.

2.55 The position in relation to Australia's WTO commitments is also clear. In the previous Senate committee inquiry, World Growth provided a legal opinion on the original version of the Bill by Andrew Mitchell and Elizabeth Sheargold of Melbourne University Law School. Although the Bill has since been amended, their observations still apply to the new version.

2.56 In particular, the legal opinion states that the original Bill was more restrictive than necessary to achieve either a health or environmental purpose. As discussed earlier in this chapter, the key health objective with oils generally is to describe the saturated fat content of a food, which is already a labelling requirement. In order to meet an environmental

45 Senate Community Affairs Legislation Committee, Inquiry into Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010, World Growth, *Submission 301*, Attachment 1, p. 13.

46 *Submission 20*, pp. 2-3.

47 *Submission 15*, pp. 3-4.

objective, the Bill would have to show that it reduces the amount of unsustainable palm oil produced and that this reduction makes 'a material contribution to' reduced deforestation. The legal opinion then states:

Although evidence might be produced to show that the Palm Oil Labelling Bill would reduce consumption of non-sustainably produced palm oil in Australia, it would be difficult to establish that this would stop or materially reduce deforestation in Malaysia or Indonesia. A reduction in the land used to produce palm oil would not necessarily restrict land clearing. Deforestation is still likely to occur, to support the production of timber and other commodities.

Even if it could be shown that the Palm Oil Labelling Bill would make a material contribution to the objective of reducing or stopping deforestation, the Bill may still be more trade restrictive than necessary to achieve that aim. The Bill does not explicitly discriminate between imported and domestic goods, but it is likely to restrict or distort trade because palm oil is predominantly produced in Malaysia and Indonesia, and other vegetable oils that may be substitutes for palm oil (such as rapeseed, sunflower seed and soya oils) are largely produced in other countries, including Australia. By making palm oil a less competitive product, the Palm Oil Labelling Bill has the effect of restricting imports of palm oil from Malaysia and Indonesia to Australia.⁴⁸

- 2.57 The first passage is consistent with the committee's earlier reasoning that the Bill is unlikely to prevent or slow down rates of deforestation. The second part shows that Australia is unlikely to win a complaint made by either country if the Bill became law.
- 2.58 The Department of Foreign Affairs and Trade noted that, 'Defending a WTO dispute is a costly, resource intensive and lengthy exercise'. If Australia was found to have contravened its trade obligations, Australian exports could be subject to retaliation in the form of higher tariffs overseas.⁴⁹

Conclusion

- 2.59 As currently drafted, the Bill most likely contravenes Australia's WTO obligations because it only requires the specific labelling of palm oil and
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48 Senate Community Affairs Legislation Committee, *Inquiry into Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010, Submission 301, Attachment 1, p. 8.*

49 *Submission 32, p. 2.*

not other oils. Requiring each type of vegetable oil to be labelled, along the lines of recommendation 12 of the *Labelling Logic* review, would address this problem.

- 2.60 In addition, the Bill is also inconsistent with the food regulation treaty between Australia and New Zealand, which requires that both countries effectively consult with each other on changes to food standards. No such consultation has yet occurred, although the committee expects that it would occur if the Australian Government accepted recommendation 12. Our international obligations and the importance of our relationship with New Zealand are sufficient reasons to oppose the Bill.

Overall conclusion

- 2.61 The inquiry has demonstrated that some consumers do want accurate labelling information so that they can make informed decisions about whether they purchase groceries or goods containing palm oil. The Senate Committee inquiry into the Food Standards Amendment (Truth in Labelling-Palm Oil) Bill, received over 520 submissions mostly from individuals arguing that palm oil be listed on food and grocery labels. In 2009, Zoos Victoria ran a public campaign in support of protecting the native habitat of orangutans and the need to label palm oil. The campaign produced approximately 70 000 online responses. In addition, Zoos Victoria also received approximately 164 000 cards signed by individuals to the same effect. This level of concern about deforestation of orangutan habitat for palm oil production cannot be dismissed. However, the committee does not accept that this is an excuse for passing flawed and potentially damaging legislation which would not achieve the results intended.
- 2.62 If the Bill was passed it could have a range of serious unintended consequences including circumventing the proven food labelling practice administered by FSANZ. This body advised the committee that if the Bill was passed it would have to prepare a standard 'that would not go into the Australia New Zealand Food Standards Code because it has not been developed under the process that has been agreed through the intergovernmental agreements'.⁵⁰ This would mean that there would be no enforcement of the standard because State and Territories would not have adopted it.

50 Mr Steve McCutcheon, *Committee Hansard*, Canberra, 18 August 2011, p. 3.

- 2.63 Similarly, Australian Consumer Law would be compromised if the Bill were passed. Treasury advised that the Bill has the potential to jeopardise the benefits gained from nationally consistent legislation. This would occur if the Commonwealth passed the law and one or more States or Territories did not. The Treasury noted that this 'could result in individuals and unincorporated businesses in those jurisdictions being subject to a different set of requirements'.⁵¹
- 2.64 In view of these major concerns, the committee is not prepared to recommend that the House pass defective legislation that would have serious unintended consequences.
- 2.65 It should be noted that a process for dealing with all oils has commenced through the report *Labelling Logic: Review of Food Labelling: Law and Policy*. In particular, Recommendation 12 of this report stated:
- 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)).
- 2.66 On 9 December 2011 the Australian and New Zealand Food Regulation Ministerial Council will consider a whole of Commonwealth, State, Territory and New Zealand Government response to the Report, *Labelling Logic: Review of Food Labelling Law and Policy*. The committee notes recommendation 12 of the report and encourages the Ministerial Council to give it serious consideration.

Recommendation 1

- 2.67 **The House of Representatives should not pass the Food Standards Amendment (Truth in Labelling-Palm Oil) Bill 2010 because the legislation is flawed and would result in a range of unintended consequences. The House should note that an alternative and superior approach to addressing palm oil labelling is already under consideration.**

On 9 December 2011 the Australian and New Zealand Food Regulation Ministerial Council will consider a whole of Commonwealth, State,

51 Mr Bruce Paine, *Committee Hansard*, Canberra, 18 August 2011, p. 28.

**Territory and New Zealand Government response to the Report,
*Labelling Logic: Review of Food Labelling Law and Policy.***

Recommendation 12 of this reports states:

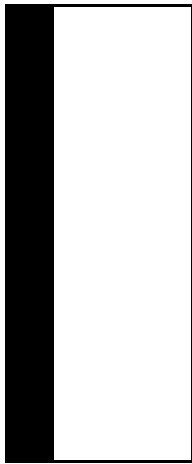
- **That where sugars, fats or vegetable oils are added as separate ingredients in a food, the terms ‘added sugars’ and ‘added fats’ and/or ‘added vegetable oils’ be used in the ingredient list as the generic term, followed by a bracketed list (e.g., added sugars (fructose, glucose syrup, honey), added fats (palm oil, milk fat) or added vegetable oils (sunflower oil, palm oil)).**

The committee supports the Ministerial Council giving serious consideration to recommendation 12 of the report.

Julie Owens, MP

Chair

14 September 2011



Dissenting report – Ms Kelly O’Dwyer MP, Mr Bruce Billson MP, Mr Scott Buchholz MP, Mr Tony Smith MP, Liberal Party of Australia

As Opposition Members, we observe that Government members on the Committee have recommended that that House not pass the Food Standards Amendment (Truth in Labelling-Palm Oil) Bill 2010.

Government members are now echoing the revised position of the Executive, following a remarkable ‘about face’ by the Government after Government Senators allowed the passage of the amended Bill and transmission to the House.

The Government's previous constructive and collaborative approach was abruptly ended by the 23 August declaration that the Government would no longer support the passage of the amended Bill.

With the amended Bill not opposed by either the Government or Opposition in the Senate, it was open to the House to believe that the Government was inclined to facilitate progress of the Bill.

The Senate inquiry report into the original Bill and evidence before this Committee on the amended Bill highlighted the various intergovernmental and multi-jurisdictional processes and arrangements through which the provisions would need to be progressed for the Bill’s enactment and enforcement.

On the basis of the position adopted by the Government in the Senate and overtures to the Opposition about working cooperatively to canvass possible alternative approaches to achieving the amended Bill's objectives, Opposition Members pursued the examination of the Bill in good faith.

Opposition Members have been keen to draw out possible and potentially more certain avenues to efficiently and effectively deliver information to consumers about palm oil in products they were considering purchasing.

A number of constructive proposals were provided in evidence about transitional arrangements, encouragement of voluntary initiatives, reducing possible implementation costs, and alignment opportunities with current labelling and consumer information requirements. There is little value in evaluating these proposals as possible amendments to the Bill given the Government's revised posture.

The major shift in the Government's position to now abandon any willingness to constructively engage in the advancement of the amended Bill's provisions and to work to cooperatively overcome legitimate areas of concern has undermined any prospect of its successful and effective implementation.

It is clear to Opposition Members that without Government sponsorship and supporting advocacy by Ministers in the relevant and complex intergovernmental fora, there is no prospect of bringing the amended Bill's provisions into operation.

The Committee has not received any evidence that points to a clear and certain way parliament alone can satisfy the procedural pre-conditions and Commonwealth obligations within intergovernmental arrangements the Bill's provisions seek to operate within.

Opposition members are particularly concerned about trade-related considerations raised in evidence to the Committee.

While this aspect was briefly touched upon in the Senate inquiry report, evidence presented to the Committee has highlighted Australia's trade obligations as a legitimate area of public policy concern. Evidence to the Committee highlights a number of trade-related risks and Sections 2.47 to 2.60 (inclusive) of the Committee's report addresses some of these issues.

Opposition members recognise that it may well be arguable that the Bill offends World Trade Organization rules by indirectly advancing the interests of local vegetable oil production that may substitute for palm oil imports, and may invoke potentially harmful retaliatory action and lengthy dispute resolution processes.

It is clear to Opposition members that the trading partner consultations required to accompany proposals for regulatory change under the 1995 food regulation treaty with New Zealand and more broadly in relevant international fora of the kind proposed by the Bill have not been undertaken.

Again, in order to satisfy essential and desirable trade-related obligations that are pre-conditions for the passage of the Bill in compliance with international commitments, Government engagement and advocacy is required that it is now simply unwilling to provide.

In their recommendation, government members are seeking to rely upon the yet-to-be-agreed response of the Australian and New Zealand Food Regulation

Ministerial Council to the Report, *Labelling Logic: Review of Food Labelling Law and Policy*, to address the policy objective of providing consumer information about the presence of palm oil in products they may consider purchasing.

The Ministerial Council is scheduled to meet on 9 December 2011 to consider its response to the *Labelling Logic* report recommendations, including a specific recommendation (No. 12) that addresses the specific listing of palm oil as a separate ingredient where it is an 'added fat' to a food product.

Opposition members support the Ministerial Council giving serious consideration to recommendation 12 of the report and keenly await the agreed response and timetable for action arising from the *Labelling Logic* report.

Only time will prove whether the faith Government Members are placing in the actual response and course of action agreed to by the Ministerial Council is well placed, and if the ambition of the Bill in seeking to provide consumer information about the presence of palm oil in products being considered for purchase is fulfilled.

In this light, Opposition members make the following recommendations:

Recommendation 1

The House of Representatives not proceed with the Food Standards Amendment (Truth in Labelling-Palm Oil) Bill 2010 at this time because the legislation requires active sponsorship and positive facilitation that the Government is now unwilling to provide despite not opposing the amended Bill in the Senate.

Recommendation 2

The House should note that the Government now asserts that it has an alternative and superior approach to addressing palm oil labelling already under consideration, namely:

"On 9 December 2011 the Australian and New Zealand Food Regulation Ministerial Council will consider a whole-of-government response to the Report, *Labelling Logic: Review of Food Labelling Law and Policy*.

Recommendation 12 of this reports 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)).

The committee supports the Ministerial Council giving serious consideration to recommendation 12 of the *Labelling Logic: Review of Food Labelling Law and Policy* report.”

Recommendation 3

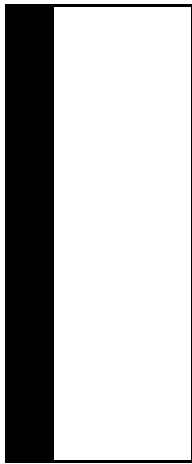
The House defer further consideration of the Food Standards Amendment (Truth in Labelling-Palm Oil) Bill 2010 until after the Australian and New Zealand Food Regulation Ministerial Council has determined its response to the *Labelling Logic: Review of Food Labelling Law and Policy* report and the extent to which the response addresses the objectives of the Bill.

Ms Kelly O'Dwyer, MP
Deputy Chair

Mr Bruce Billson, MP

Mr Scott Buchholz, MP

Mr Tony Smith, MP



Dissenting report – Mr Adam Bandt, MP, Australian Greens

There is widespread community support for the labelling of palm oil. Consumers expect that they will be able to choose whether or not to purchase items containing palm oil.

This support was reflected in the passage of the Food Standards Amendment (Truth in Labelling –Palm Oil) Bill 2011 through the Senate.

It is disappointing that the Government is not prepared to support this Bill and that the Coalition has altered its level of support.

If there are, as the Government alleges, barriers to the Parliament passing the Bill, then the Government has the power to remove those barriers, and should do everything necessary to enable labelling of palm oil and the passage of this Bill.

Further, the Review of Food Labelling Law and Policy has been underway for two years and the rate of reform is frustratingly slow. The main driver for food labelling should be conveying information that enables consumers to make informed choices, rather than the demands of the food industry. Further the Ministerial Council should set a very clear direction for FSANZ to improve its response to consumer requirements, including environmental and ethical concerns as well as food safety issues.

Recommendation 1:

The House of Representatives proceed to pass the Food Standards Amendment (Truth in Labelling –Palm Oil) Bill 2011 and requests that the Government take all steps necessary to enable the prompt passage and effective implementation of the Bill.

Recommendation 2:

The committee submits to the Ministerial Council meeting in December that a comprehensive system of food labelling be implemented without delay, in particular the labelling of food products containing palm oil.

Mr Adam Bandt, MP



Appendix A – Submissions

No.	Provided by
1	Consumer Action Law Centre
2	Professor Colin Groves
3	Australian Orangutan Project
4	Indonesian Palm Oil Commission
5	Deanna Kohler Maich
6	Louise Cross
7	Jeff Stier
8	George Weston Foods
9	Zoos Victoria
10	SONECON
11	Kraft Foods Australia Pty Ltd
12	New Zealand Food & Grocery Council
13	The Palm Oil Action Group
14	Sucrogen Foods Pty Ltd
15	Department of Health and Ageing
16	Humane Society International

No.	Provided by
17	B Bain
18	Ministry of Plantation Industries and Commodities, Malaysia
19	National Associations of Smallholders, Malaysia (NASH)
20	Australian Oilseeds Federation
21	Economists at Large
22	Department of the Treasury
22.1	Supplementary submission
23	Department of Innovation, Industry, Science and Research
23.1	Supplementary submission
24	New Zealand High Commission
25	Australian Industry Group
26	Sanitarium Health & Wellbeing Company
27	Australian Food and Grocery Council
28	Unilever Australasia
29	ACCORD Australasia Limited
30	World Growth
31	Mr Chris Banks
32	Department of Foreign Affairs Defence and Trade
33	Woolworths Limited
34	The Australian Institute of Horticulture Inc
35	Campbell Arnott's
36	Ministry of Trade of the Republic of Indonesia
37	The Jane Goodhall Institute Australia



Appendix B - Witnesses

Thursday, 18 August 2011 – Canberra

Department of Health and Ageing

Ms Kathy Dennis, Assistant Secretary, Research, Regulation and Food Branch

Ms Megan Morris, First Assistant Secretary, Australia New Zealand Therapeutic Products Agreement Task Force

Food Standards Australia New Zealand

Mr Steve McCutcheon, Chief Executive Officer

Mr Peter May, General Manager, Legal and Regulatory Affairs

Department of Agriculture, Fisheries and Forestry

Mr Richard Souness, General Manager, Food Branch

Innovation, Industry, Science and Research

Ms Ann Bray, General Manager, Industry and Small Business Policy Division

Australian Food and Grocery Council

Ms Kate Carnell, Chief Executive Officer

Mr Tony Mahar, Director of Sustainable Development

Ministry of Plantation Industries and Commodities of Malaysia and representatives of the Malaysian palm oil industry

H.E. Mr Salman Ahmad, High Commissioner for Malaysia

Dr Yusof Basiron, Chief Executive Officer, Malaysian Palm Oil Council

Mr Ak Nan, Ministry of Plantation Industries and Commodities, Malaysia

Mr Aliasak Ambia, President, National Association of Smallholders

Mr Palaniappan Swaminathan, Senior Executive Director, Felda Agricultural Services

Department of the Treasury

Mr Bruce Paine, Principal Adviser, Competition and Consumer Markets Group

Ms Danielle Staltari, Manager, Consumer Policy Unit

Australian Competition and Consumer Commission

Mr Scott Gregson, General Manager, Enforcement Operations Group

Australian Chamber of Commerce and Industry

Mr Iain Macgregor, Industry Representative

Mr Murray Beros, Industry Representative

Mrs Marilyn Elson, Industry Representative

Friday, 19 August 2011 – Canberra**Institute of Public Affairs (teleconference)**

Mr Tim Wilson, Policy Director

Accord Australasia

Mr Craig Brock, Director, Policy and Public Affairs

Taronga Conservation Society Australia

Mr Cameron Kerr, Director and Chief Executive

Zoos Victoria

Ms Jennifer Gray, Chief Executive Officer

Ms Jacqueline O'Brien, Acting General Manager of Communications

Australian Oilseeds Federation

Mr Nick Goddard, Executive Director

Australian Institute of Horticulture

Mr Kim Morris, National President

Ai Group

Chris Rowarth, Systems and Compliance Manager, Mars Chocolate Australia

Jennifer Thompson,, Technical & Regulatory Manager

Tim Piper, Victorian Director

Mr Simon Talbot , Director of Corporate Affairs, Kraft Foods Limited
Australia/New Zealand

Deakin University

Professor Andrew Sinclair, Professor of Nutrition Science (private capacity)

Palm Oil Action Group

Mr Tony Gilding, Joint Founder

Australian Orangutan Project

Mr Leif Cocks, President



Appendix C – Exhibits

No.

1. S O Taylor, *Earth's Green Heart Trilogy: Asia's Disappearing Green Heart, A personal journey through the forests of Asia*, 2010, Green Heart Films (provided by the Humane Society International)
- 2.1 H Buckland, *The oil for ape scandal – how palm oil is threatening orang-utan survival*, September 2005, Friends of the Earth Trust (provided by the Australian Orangutan Project)
- 2.2 Eye on Aceh, *The 'Golden' Crop? Palm Oil in Post-tsunami Aceh*, September 2007 (provided by the Australian Orangutan Project)
- 2.3 M Hickman, 'The guilty secrets of palm oil: Are you unwittingly contributing to the devastation of the rain forests?' *The Independent*, 6 July 2009, (provided by the Australian Orangutan Project).
- 2.4 D Sheil et al, *The impacts and opportunities of oil palm in Southeast Asia: What do we know and what do we need to know?* 2009, Center for International Forestry Research (provided by the Australian Orangutan Project)
3. T Wilson, *Upward pressure: The cost of politically abusing food labelling*, June 2011, Institute of Public Affairs (provided by Mr Tim Wilson)
4. Correspondence from the Minister of Trade of the Republic of Indonesia, Dr Mari Elka Pangestu, to the Minister for Trade, the Hon Craig Emerson

MP, dated 27 June 2011 (provided by the Indonesian Trade Promotion Centre)