



Australian Government
Department of Foreign Affairs and Trade

Deputy Secretary

Telephone: 02 62613384
Facsimile: 02 62732081

File Number: 11/16430

16 August 2011

Mr Stephen Boyd
Committee Secretary
Standing Committee on Economics
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Mr Boyd

Attached is a public submission from the Department of Foreign Affairs and Trade to the House of Representatives Standing Committee on Economics' Inquiry into the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011.

The submission highlights foreign and trade policy concerns associated with this Bill.

The Department is ready to provide the Committee with additional information relating to any matter in the submission should it be considered necessary. The official responsible for this matter is Elizabeth Ward, Assistant Secretary, Office of Trade Negotiations on 6261 2424 or elizabeth.ward@dfat.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bosper'.

(Bruce Gosper)

Public Submission from the Department of Foreign Affairs and Trade to the House of Representatives Standing Committee on Economics' inquiry into the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011

1. Department of Foreign Affairs and Trade does not believe the draft Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011 represents good policy. Passage of this Bill would:
 - a. harm important foreign relationships;
 - b. breach treaty obligations with New Zealand which underpin the cooperative bi-national system for developing and reviewing food standards;
 - c. breach the Commonwealth's obligations with the States and Territories as set out in the Food Regulation Agreement;
 - d. compromise the principles underpinning Australia's food safety regulations by requiring food labelling for non-food safety reasons;
 - e. impose a costly outcome on industry (highlighted in Australian Food and Grocery Council (AFGC) submission to the Senate Standing Committee on Economics 16 October 2009, AFGC submission to the Department of Health and Ageing September 2009, AFGC submission to the Department of Health and Ageing, May 2010); and
 - f. provide a broad policy precedent which, if emulated internationally, could seriously impede Australian exports.
2. No other country has taken the approach of singling out palm oil for labelling that the draft Bill proposes.
3. There is no evidence to suggest that labelling products which use palm oil would be an effective means to address the underlying motivation of the Bill – to address concerns of deforestation in South East Asia.
4. The Australian Government already funds projects worth over A\$300 million, the objectives of which are to address deforestation and illegal logging in South East Asia. These projects deliver inherent benefits for the region's biodiversity, including orang-utan habitats.
5. The proposed Bill raises a number of issues relating to Australia's international trade obligations in the World Trade Organization (WTO) and obligations agreed in Australia's Free Trade Agreements.
6. The labelling standards proposed would need to be assessed against the following obligations under the WTO Technical Barriers to Trade agreement:
 - a. all imported products should be treated no less favourably than like domestic products or like products from another country, including ensuring that the application of a measure which is non-discriminatory on its face does not amount to *de-facto* discrimination;
 - b. technical regulations must not be more trade restrictive than necessary to fulfil a legitimate objective:
 - i. 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;
 - c. international standards (e.g. Codex Alimentarius' 10 Standard 1-1985 *Labelling of Pre-packaged Foods*), where they exist, should be used as the basis for any domestic standard unless they would not effectively or appropriately fulfil the legitimate objectives pursued;
 - d. a WTO Member must notify other Members of the development and implementation of standards if an international standard does not exist or is not being followed and would potentially have a significant impact on trade, and provide an opportunity for other Members to comment; and
 - e. the effect of the measure on developing countries must be taken into account in the development and application of a technical regulation; this may include providing capacity building.
7. Indonesia and Malaysia, respectively the top two palm oil producing nations, have expressed their deep opposition to the Bill. Indonesia has stated publicly that the Bill contravenes Australia's WTO obligations and has challenged the Bill's health and environmental rationale. Malaysia has similarly stated that the Bill will not meet environmental motivations or consumer health and safety concerns, and has expressed concern that the Bill would affect efforts to tackle rural poverty and promote economic development.
8. Defending a WTO dispute is a costly, resource intensive and lengthy exercise.
9. WTO Members found to not comply with their trade obligations by the WTO dispute panel and failing to implement its findings can ultimately be subject to retaliatory measures in the form of higher tariffs.