

Further Submission and Answers to Questions on Notice
Senate Community Affairs Legislation Committee on the Food
Standards Amendment (Truth in Labelling—Palm Oil) Bill
2010

on behalf of the
Australian Orangutan Project

13 May 2011

On Tuesday 19 April 2011 Leif Cocks, President of the Australian Orangutan Project provided evidence to the Senate Community Affairs Legislation Committee on the *Food Standards Amendment (Truth in Labelling—Palm Oil) Bill 2010*. A number of questions were taken on notice and this further submission addresses each of those questions and raises additional other matters in response to evidence provided to the Committee.

Oil palm is one of the world's most readily expanding equatorial crops, which makes it unique. It is a form of agriculture that should be properly managed and placed in a position of the highest priority in the context of sustainable development considerations. There is no question that these issues give rise to significant international challenges that must be confronted having regard to sensitive issues of national sovereignty and the many differing national circumstances and balanced with the need to ensure land use is undertaken in a way which ensures consistency with international obligations arising under numerous multilateral international agreements including the Convention on Biological Diversity.

Health and safety and the environment

In the course of evidence provided to the Committee on 18 April 2011 it was stated by Mr Tony Mahar, Director, Sustainable Development, Australian Food and Grocery Council ("AFGC") that:

".....we support mandatory labelling of food and grocery products that inform consumers as to the ingredients of a product where they relate to health and safety. From a health and safety perspective it is obviously important for consumers to know how much and what type of ingredients the products contain. Pursuing the adoption of mandatory labelling for ingredients such as palm oil for environmental reasons that do not impact on the health and safety of a consumer product would lead to the amount of information on each label being so large and so confusing that there is a high potential for the more critical information relating to health and safety to be compromised."

We consider the comments made by Mr Mahar concerning the amount of information on labels to be over-exaggerated. Further, we hold concerns that the issue is not being looked at in its proper context and is being conveniently fragmented in an unrealistic way. In a global environment whereby the world is addressing serious and very complex issues such as over population,

poverty, environmental damage and climate change there must be a more holistic approach taken if we are to achieve development in a sustainable way. To consider deforestation and many other environmental problems as being in some way separated from human health and safety is unrealistic and unhelpful. Human health and the environment from which we derive our health are intrinsically linked and in circumstances whereby population growth and demands on resources and food security become more and more pressing there is an urgent need for sustainable agriculture solutions. Information provided to consumers as to the sustainability or otherwise of the production of goods should be broadened beyond a strict and limited narrow interpretation of the relationship between the food we require, our health and safety and the way in which this food is produced. For example, deforestation and associated emissions caused by deforestation and forest degradation contribute significantly to climate change, which is unquestionably a serious international health and safety issue.

Further, it is mentioned in evidence that a carbon tax together with this additional issue of palm oil labelling becomes problematic for businesses causing a 'perfect storm'. This is not difficult to comprehend and is an unfortunate outcome that is caused by the continuous avoidance and delay in addressing the importance of environmental issues and consumption of resources. A problem that will continue to compound in the event that this Bill is not passed. Australia has failed to properly address the issue of climate change for many years and we are now beginning to see the impact of this delay in terms of costs on our society. There is no denying that addressing these issues will be costly all over the world and the most expert opinions including the renowned Stern report recommend that the issues should be addressed early as to delay will be more costly. This is particularly concerning in the context of the expansion of palm oil for use in biofuels and bioenergy to be used in the transport and energy sectors as an alternative to fossil fuel.

Broadening the parameters in terms of food labelling to relate to certain specific environmental issues is inevitable if we are to achieve sustainable development and is critical for a proper response that will cause greater costs if continuously delayed. We regard palm oil as being one such unique circumstance, which ought give rise to this exception. We do not expect that any form of 'floodgate' scenario may occur, however we do expect that the issue of the relationship between our environment and the significant consumption of resources in developed countries will continue to be a central issue for debate.

The need for social awareness

Ms Katherine Carnell, Chief Executive, AFGC provides evidence to the Committee on 18 April 2011 which states:

"To be really honest, what a lot of companies are worried about is their products being used, I suppose, as a focus for maybe demonstrations and those sorts of things about something different, like the plight of the orang-utans. Their concern is their products ending up being the focus for that, which would be incredibly unfair and unreasonable...."

The AOP finds this comment to be somewhat concerning as it implies that where a food production company is deriving palm oil from a source that is not certified as being sustainable and which is or may be having a direct negative impact on biodiversity, it would be '*unfair and unreasonable*' for this issue to be brought to attention of the public.

We hold serious concerns as to a comment of this nature which we consider to be irresponsible and urge the Committee to disregard it.

Voluntary labeling

A question was taken on notice from Senator Boyce, which relates to voluntary labeling and asks of the benefits of voluntary labeling moves in Australia.

We do not consider that voluntary labeling is sufficient in the circumstances. Like anything voluntary, it is most likely to be taken up only where there is a commercial advantage to the food producer in doing so. Having regard to the vast variety of products, which contain palm oil it is fair to say that the markets may be too competitive to allow for such a commercial advantage and it is inevitable that cheaper alternatives that do not incur the costs of additional labeling will be preferred by consumers and producers alike.

There have been ongoing initiatives for voluntary labeling of products however these have clearly not worked and there is no evidence to suggest that this circumstance will change. In fact the contrary was indicated in the evidence of Mr Barnell where he states:

“We are not in any way opposed to voluntary labelling of palm oil, and many companies have decided to go down that path. It was interesting that the recently released Blewett review suggested that a hierarchy should exist; right at the top health and safety issues should be mandatory and right at the bottom community issues, issues that are not related to the product like this one, should be voluntary. In between was preventative health and so on, which was a hierarchy going from mandatory to co-regulatory to voluntary. In the Blewett review it has been suggested that these sorts of issues that do not relate to the health, safety or the contents directly of the product should be voluntary and we would support that approach.”

This hierarchical approach is very concerning as it relegates issues that are central to sustainability to the bottom as the least important. This position is inconsistent with and will not contribute to the sustainable development approach that is required in the context of current population projections of a global population of 9 billion people by 2050¹. Should this type of approach be encouraged, food security and poverty alleviation will inevitably continue to come at a significant cost to the environment and biodiversity.

Further, of note, the AFGC confirm that they are members of the Roundtable on Sustainable palm Oil (“RSPO”) and say they encourage their members to take up voluntary labeling of some kind. We agree with the observations of Senator Xenophon that a fundamental contradiction exists in their evidence, as if it was in fact the case that all the AFGC members took up the recommendation then one could argue that it makes little difference if there is mandatory labeling. It would appear obvious from the evidence provided that it is highly unlikely that members of the AFGC will take up the recommendation due to cost considerations and based on this evidence we have no confidence that the AFGC will be doing much to encourage them to do so.

Economic Benefits

A further question was taken on notice asking of the economic benefits gained from having non-palm oil production or other alternative methods of agriculture. This question arose from the

¹ http://www.merid.org/en/Content/Topics/Agriculture_and_Food_Security.aspx;

Submission made on behalf of the Government of Malaysia and also the evidence provided by Malaysian government representatives to the Senate Committee on 18 April 2011. In this context it should be noted that the AOP does not propose that there be absolutely no palm oil production. Further, in addition to alternative methods of agriculture there are alternative methods of revenue and poverty alleviation such as programs to reduce deforestation and forest degradation (REDD+) for the purpose of climate change mitigation and adaptation.

Concerns as to an impact on small scale palm oil farmers was raised and Dr Yusof Basiron, Chief Executive Officer, Malaysian Palm Oil Council provided evidence that some 43 per cent of oil palm plantations are owned by small holders. In this context, the following exchange occurred:

*“**Senator XENOPHON**—.....This bill does not seek to prohibit palm oil, it just seeks to label it, and whether it is from certified sustainable palm oil. I think the RSPO process seems to be fairly robust, from what we have heard. You have expressed concerns about job losses. If it is simply allowing consumers to say, ‘I would rather have certified sustainable palm oil, and that costs a bit more money, but I am happy to spend a little bit more for a product that has certified sustainable palm oil’, would you necessarily see that as having the impact on jobs that you have initially stated?*

***Dr Basiron**—Yes, because sustainable palm oil certified cannot be accessed to every producer like the small farmers. They are not saying they are producing unsustainable palm oil. They are producing palm oil in a sustainable manner too, but they cannot get certified. So, this is the kind of dilemma that we have. How do we push these small farmers to be certified sustainable in order to participate in this promoted sustainable market? They cannot afford this. They are doing exactly the same practice of agriculture in oil palm planting, just like the other certified people, but because they never go through the certification process, they are caught with this dilemma. This will lead to market destruction. Market destruction means less demand, less income for the majority of our farmers. They would not support this type of labelling effort because it will affect them directly.”*

This exchange should be read together with evidence that was provided at a later stage of the presentation by the Malaysian representatives:

*“**ACTING CHAIR**—..... I understand the point about the cost for small producers. Has consideration been given to look at and talk to the certifier and RSPO about how you could come up with a process to certify small landholders so that they are not bearing an overly onerous burden compared with some of the bigger producers. Has there been consideration of that process?*

***Dr Basiron**—Yes. The RSPO has some relaxation about how to certify the small holders, but it is a work in progress.*

***ACTING CHAIR**—It is not done yet?*

***Dr Basiron**—They are still having an initiative about how to make it more palatable for the small holders. Our government actually tries to help from the other side by giving a 50 million ringgit subsidy to help the small holders comply to be RSPO certified. So, both sides are working towards helping the small holders, but it is a very onerous process, if you like. We have thousands and thousands. For example, one alone has 112,000 small*

holders, and there are free small holders around the country, just like your farmers. But they are all licensed by us. We know who they are and we can trace them. We are working towards helping them out.”

It is important that the Committee place significant emphasis on this exchange and recognize that the concerns raised by the Malaysian representative does not bear on the proposed legislation itself but is of direct relevance to the certification process undertaken by the RSPO. Furthermore, this difficulty would appear to be in the process of being resolved which is to be applauded and encouraged. It must be taken from this evidence that in the very near future, provisions will in fact be in place in Malaysia that will enable this 43% of the palm oil industry to gain the requisite certification and would in fact be placed in a competitively advantageous position.

In addition to the economic issues already raised, it is important to note a central issue that was surprisingly not raised by the Malaysian representatives, namely the potential economic benefit to be obtained by countries such as Malaysia and other forest nations arising from the recently agreed international regime for REDD+. Deforestation and forest degradation, through agricultural expansion, conversion to pastureland, infrastructure development, destructive logging, fires etc., account for nearly 20% of global greenhouse gas emissions, more than the entire global transportation sector and second only to the energy sector. It is now clear that in order to constrain the impacts of climate change within limits that society will be able to tolerate, the global average temperatures must be stabilized within (preferably well below) two degrees Celsius. This will be practically impossible to achieve without reducing emissions from the forest sector, in addition to many other mitigation actions.

REDD is an effort to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. “REDD+” goes beyond deforestation and forest degradation, and includes the role of conservation, sustainable management of forests and enhancement of forest carbon stocks. It is predicted that financial flows for greenhouse gas emission reductions from REDD+ could reach up to US\$30 billion a year. This significant North-South flow of funds could reward a meaningful reduction of carbon emissions and could also support new, pro-poor development, help conserve biodiversity and secure vital ecosystem services. Further, maintaining forest ecosystems can contribute to increased resilience to climate change. These multiple benefits include ‘ecosystem-based benefits’ such as conservation of forest biodiversity, water regulation, soil conservation, timber, forest foods and other non-timber forest products. Various factors affect the extent to which these benefits are delivered: the type, location and condition of the forest involved, which REDD+ activity is undertaken, how it is implemented, and the dependence of the local population on forest resources. REDD+ can also lead to direct social benefits, such as jobs, livelihoods, land tenure clarification, carbon payments, enhanced participation in decision-making and improved governance. REDD+ is a potential win-win, capable of preserving forests while protecting local livelihoods. In doing so, it can make a major contribution to avoiding catastrophic climate change and simultaneously promote sustainable development².

It could be said that mandatory palm oil labelling in a developed country such as Australia could in fact contribute to the alleviation of poverty. It is well recognized that there is a serious need for more effective governance around the forest sector in developing countries and mandatory

² Tropical Forests and climate: Deforestation Today: It’s Just Business, Union of Concerned Scientists, Briefing #7, November 2010;

labelling of palm oil will contribute to improved governance as more producers and farmers will take steps to obtain certification and recognition under the RSPO. A recent report in the Jakarta Post provided shocking figures that are lost to the Indonesian economy each year due to non-procedural forest use in Kalimantan in the vicinity of US\$36 billion³. The Government report, which was released by the Judicial Mafia Taskforce and the Forestry Ministry, confirm that regents and mayors in East, West and Central Kalimantan were involved in "non-procedural forest use" for plantations and mining, including violating spatial planning agreements and failing to grant needed licenses. Undertaking measures that will encourage sustainable palm oil will contribute to a reduction in corrupt activities and contribute to the relevant economies by decreasing these types of financial losses.

Drivers: palm oil expansion is an internationally accepted driver of deforestation

There is an ongoing debate as to whether palm oil expansion is a driver of deforestation and industry groups with vested interests seek to draw on this argument time and time again. Poverty is often cited as being the leading cause of deforestation and some influential groups usually argue that addressing any matter other than poverty itself (ie illegal logging, palm oil expansion, mining etc) is not appropriate and in fact contributes to poverty. This argument is troubling as drivers of deforestation cannot be looked at in isolation and there are many 'drivers' that are accepted by academics and governments around the world. To simply focus on one 'driver' of deforestation whether it be poverty, palm oil expansion or logging is misleading and inaccurate and will achieve very little in addressing this very complex and important issue.

It is also important for the Committee to note that the issue of drivers of deforestation and degradation is a central component to the international climate change agreement concerning REDD+. It has been agreed that all Parties will find effective ways to reduce human pressure on forests that results in greenhouse gas emissions, including actions to address drivers of deforestation⁴. Legislation such as this is one such action.

The relationship or linkage between deforestation and palm oil expansion was considered in evidence provided by Mr Carl Bek-Nielsen of the Malaysian Palm Oil Council on 18 April 2011 with the following exchange taking place:

“Mr Bek-Nielsen—Yes. There are also other tables that will confirm this and reaffirm this from the United Nations studies, which have been done by FAO. In that connection, if I may just very quickly go back and answer a question Senator Xenophon raised regarding deforestation, you would like to see what the deforestation rates were over the last 20 years. If we go back to statistics, under the United Nations, you will see that from 1990 to 2010, around 300 million hectares of forests worldwide have been cleared. If you put things in perspective and ask how much of that has actually been planted up with oil palms, considering no land use conversion from other crops into oil palm, you will see that that figure is just below three per cent, namely, nine million hectares. It is not even three per cent of the total area cleared under forests over the last 20 years which have been occupied by oil palms.

Senator XENOPHON—Would it be fair to say that the clearing of land of rainforest has helped facilitate an increase in palm oil production?

³ Rp 311 trillion 'lost to forest misuse' in Kalimantan: Gov Tifa Asrianti, The Jakarta Post, Jakarta | Tue, 05/03/2011 10:53 PM;

⁴ Paragraph 68, Cancun Agreements;

Dr Basiron—No. The oil palm production, as I said, is not correlated to the amount of rainforest cleared by those countries—not only Malaysia and Indonesia. There is no real correlation that will link us to the clearing of forests. That is done by the logging industry.

To look at the issue of palm oil expansion as against global deforestation rates is unhelpful and takes the real issue out of context, no doubt in order to suggest numbers that are more advantageous to the arguments raised by the palm oil industry itself. If the Committee is to place attention on the issue of deforestation relative to palm oil expansion, we submit that it is more useful to do so with particular emphasis being placed on those countries that engage in palm oil agriculture only. This evidence should be read with a recent publication available through the RSPO web site entitled “Is oil palm agriculture really destroying tropical biodiversity” which states:

“Our analyses of land-cover data compiled by the United Nations Food and Agriculture Organization (“FAO”) suggests that during the period 1990 – 2005, 55% - 59% of oil palm expansion in Malaysia, and at least 56% of that in Indonesia occurred at the expense of forests.”

Furthermore, an interesting statistic identified in the 2011 FOA Annual Report on the State of the World's Forests identifies that the area of primary forests decreased in all Asia and the Pacific subregions in the last decade, despite the fact that the area designated for conservation of biodiversity increased in the same period. We would submit that the Committee place emphasis on this decrease in natural forests in all Asia over the period 1990 – 2010 in order to determine the extent to which these deforested areas have become or are planned to become palm oil plantations.

It is also important for the Committee to give due consideration to the complexities that arise when using the word ‘forest’ as there are different definitions and there has, for a number of years been outstanding serious debate around the definition of the word ‘forest’. In many circumstances a monoculture plantation such as palm oil will be regarded as a forest and so it is often necessary to ‘scratch beneath the surface’ when considering submissions that say there have been increases in forest cover or decreases in forest cover loss.

A further question was raised in the course of the evidence given by Mr Cocks which sought his view on the relevant provision of the certification process of the Roundtable on Sustainable Palm Oil which prevented any certification for palm oil grown on lands that had become deforested after 2005. The question goes to clause 7.3 of the RSPO Principles and Criteria for Sustainable Palm Oil Production *including Indicators and Guidance October 2007* which requires that certification will not be obtained unless:

“New plantings since November 2005, have not replaced primary forest or any area required to maintain or enhance one or more High Conservation Values.”

The effectiveness of this provision will depend on a number of factors, in particular:

1. what is the decision making process within the RSPO in terms of determination as to whether an area is ‘required’ to maintain or enhance one or more High Conservation Values; and
2. what is a High Conservation Value.

Turning to the second point first, there would appear to be no accepted international definition as to what a ‘high conservation value’ may be. The term has been raised in ongoing disputes concerning forest activities in Tasmania recently⁵ and has largely replaced the term ‘old growth’ when discussing forest ecosystems that require protection. The Forest Stewardship Council (“FSC”) has however undertaken some development of the concept and lists four key indicators:

- forest areas containing globally, regionally or nationally significant concentrations of biodiversity values, (e.g. endemism, endangered species, refugia), and / or landscape-level forests, contained within or containing the management unit where viable populations of most if not all naturally occurring species exist in natural patterns of distribution and abundance;
- forest areas that are in or contain rare, threatened or endangered ecosystems;
- forest areas that provide basic services of nature in critical situations (eg watershed protection, erosion control); and
- forest areas fundamental to meeting basic needs of local communities (eg subsistence health) and / or critical to local communities’ traditional cultural identity (areas of cultural, ecological, economic or religious significance identified in cooperation with such local communities).

When considering these provisions and their affect, it should be noted that in many cases, following the identification of high conservation value forests, logging can still be undertaken provided that management activities maintain or enhance the attributes which define such forests. This form of forest management will allow for logging activities to be undertaken over time. If not managed properly or if undertaken illegally as is the case in many areas relevant to palm oil production and which lack law enforcement, the forest can become a degraded or secondary forest and may not fall within the provisions that allow for protection or classification as a high conservation or primary forest. This then paves the way for deforestation and conversion.

As made clear in the evidence provided by Mr Cocks, many Orangutans live in secondary forests and unless a secondary or degraded forest can be established as a forest of high conservation values the area is potentially subject to deforestation and palm oil expansion that could theoretically be certified by the RSPO.

Hence, we are of the view that the certification process can be strengthened and the RSPO should employ a clear approach and appropriate safeguards for the protection of secondary and degraded forests that contain high conservation values. For the purpose of doing so, a simple amendment to the certification requirements to read as follows would be recommended:

“New plantings since November 2005, have not replaced primary or secondary forest or any area required to maintain or enhance one or more High Conservation Values.”

As to the first point the decision making process of the RSPO to determine whether an area is ‘required’ to maintain or enhance a high conservation value is an internal decision making process of the RSPO of which we are unable to comment.

⁵ What is ‘high conservation value’, ABC Northern Tasmania, ABC, 16 March 2011 by Tim Walker;

Drivers are not only relevant to developing countries

While some of the dynamics that drive deforestation and forest degradation must be resolved at a national level, others are inherently international in scope. Without consumer countries' such as Australia committing to take actions that will reduce demand for food, fuel and fibre, help increase land-use efficiency and productivity, and send market signals that incentivize legal and forest-conserving production practices, there is little hope of tackling forest destruction in a coherent way⁶. The concern that tropical forests are being cut down by poor farmers simply trying to feed their families—and the resulting argument that slowing or stopping deforestation would hurt peasant communities—is by and large out of sync with twenty-first-century realities. Instead, the by-products of deforestation are most likely feeding better-off consumers in cities, both in developing and developed countries. This is implicit in the fact that deforestation rates increase along with urban population growth and agricultural exports, but not with rural population growth⁷.

If REDD+ programs are going to be successful, a fundamental element of activities must involve an accurate assessment of the diverse pressures on forests in a REDD country that are leading to deforestation and forest degradation—i.e. the “drivers”. To be fully effective, this evaluation must include an identification and analysis of both domestic and international drivers. A proper solution is impossible without a full diagnosis of the problem: without identifying, monitoring, implementing legislation and addressing the direct and underlying drivers of deforestation and degradation in a comprehensive way, REDD+ programs can fail.

Conclusion

Logging, both legal and illegal, causes forest degradation and creates opportunities for further degradation and land clearance in response to demand for export-led commercial agriculture including palm oil, which has become so great that it is widely considered a primary cause of tropical deforestation⁸.

In a global environment whereby the world is addressing serious and very complex issues such as over population, poverty, environmental damage and climate change there must be a more holistic approach taken if we are to achieve development in a sustainable way. Broadening the parameters in terms of food labelling to relate to certain specific environmental issues is the inevitable responsible outcome if we are to achieve sustainable development and is critical for a proper response that will cause greater costs if continuously delayed.

The evidence submitted that asserts that this legislation will contribute to poverty is misguided as in the very near future, provisions will in fact be in place in Malaysia that will enable this 43% of the palm oil industry to gain the requisite certification and would in fact be placed in a competitively advantageous position. Mandatory labelling of palm oil will contribute to improved

⁶ **INTERNATIONAL DEMAND SIDE DRIVERS: ENSURING THAT ALL COUNTRIES EVALUATE AND ADDRESS DRIVERS OF DEFORESTATION AND DEGRADATION FOR REDD+ SUCCESS**, An Environmental Investigation Agency briefing for the Cancun UNFCCC negotiations, *December 2010*;

⁷ DeFries, R.S., T. Rudel, M. Uriarte, and M. Hansen. 2010. Deforestation driven by urban population growth and agricultural trade in the twenty-first century. *Nature Geoscience* 3:178–181;

⁸ **INTERNATIONAL DEMAND SIDE DRIVERS: ENSURING THAT ALL COUNTRIES EVALUATE AND ADDRESS DRIVERS OF DEFORESTATION AND DEGRADATION FOR REDD+ SUCCESS**, An Environmental Investigation Agency briefing for the Cancun UNFCCC negotiations, *December 2010*;

governance as more producers and farmers will take steps to obtain certification and recognition under the RSPO. Further, it is predicted that financial flows for greenhouse gas emission reductions from REDD+ could reach up to US\$30 billion a year. This significant North-South flow of funds will also support new, pro-poor development, help conserve biodiversity and secure vital ecosystem services.

Drivers of deforestation and degradation are a central component to the international climate change agreement concerning REDD+. Drivers cannot be looked at in isolation and there are many ‘drivers’ that are accepted by academics and governments around the world. To simply focus on one ‘driver’ of deforestation whether it be poverty, palm oil expansion or logging is misleading and inaccurate and will achieve very little in addressing this very complex and important issue. While some of the dynamics that drive deforestation and forest degradation must be resolved at a national level, others are inherently international in scope. Without consumer countries’ such as Australia committing to take actions that will reduce demand for food, fuel and fibre, help increase land-use efficiency and productivity, and send market signals that incentivize legal and forest-conserving production practices, there is little hope of tackling forest destruction in a coherent way⁹. This proposed legislation is one such step and the Committee should recommend that the Bill be passed.

Stephen Leonard LLB¹⁰

⁹ **INTERNATIONAL DEMAND SIDE DRIVERS: ENSURING THAT ALL COUNTRIES EVALUATE AND ADDRESS DRIVERS OF DEFORESTATION AND DEGRADATION FOR REDD+ SUCCESS**, An Environmental Investigation Agency briefing for the Cancun UNFCCC negotiations, December 2010;

¹⁰ Stephen Leonard is an Australian lawyer, legal consultant to the Australian Orangutan Project and UK based organization, Global Witness and has worked as part of the UNFCCC negotiations concerning REDD+ since 2009.