

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

20-21 November 2013

Question: SBT 11-28

Topic: ACCC Investigation into Plywood

Written: Received 22 November 13

Senator MADIGAN asked:

At Budget Estimates in June this year I asked the ACCC several questions about an investigation it had conducted into the importation of substandard structural flooring and plywood imported from Chile.

A couple of weeks ago the ACCC provided the following answer:

'In late 2011 and early 2012, the ACCC considered allegations that a specified trader had sold plywood of a certain grade which allegedly did not meet the requirements of that grade. Following approach from the ACCC, the trader ceased the sale of the plywood in question and conducted an internal investigation.

Following this, the trader provided the ACCC with independent certification of the products, which indicated that the products met the grading requirements. Despite this, the trader withdrew the products from sale and re-graded the plywood.

The ACCC was satisfied with this outcome in the circumstances and closed its investigation. The ACCC has not received any further complaints regarding this trader.'

11. Regarding the independent certification referred to in your answer; you mentioned this came about as part of an internal investigation conducted by the trader. So the trader who was under investigation was the one who actually investigated the allegations against themselves.

Was the accreditation of the certifier undertaken in a National Association of Testing Authorities (NATA) accredited laboratory in accordance with the test procedures and calculations for strength and modulus of elasticity required under the appropriate Australian/New Zealand Standards?

(AS/NZS 2269.1:2008 – Plywood – Structural – Part 1: Determination of structural properties – Test methods) - Attachment A

12. With the re-grading of the product referred to in your answer, what was the product re-graded to; i.e. Stress Grade F14 to Stress Grade F8?
13. I understand that F8 Stress Grade is unsafe in a number of applications where the user was expecting an F14 product. Is this accurate?
14. There was no public statement from the manufacturer for the ACCC at the conclusion of the investigation. Is that correct?
15. Was the decision not to issue a statement of notification made on the basis that Independent certification was provided?

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

20-21 November 2013

I ask this because I can see a situation where some of this product which is actually F8 Stress Grade but branded F14 Stress Grade is potentially still floating around or actually in use, but consumers or users of the product would be unaware.

16. I believe the original branding of the product was: F14 CD A-Bond 15-30-5 E0 Structural T&G flooring product. Did the independent certification match that claim?
17. It is my understanding that the branding in the samples which led to the complaint included a licence number that was poorly marked and not entirely legible. Was any explanation provided for how that occurred?
18. Regarding engineered wood products more generally, is the ACCC aware of any examples of Engineered Wood Products that don't reach Australian Standards which have been found on the Australian Market, whether or not they have been specifically referred to the Commission?
19. Regarding formply and LVL beams – the collapse of which can cause the death of construction workers – is the ACCC aware of any claims of imported products of this type being on the market but which do not conform to Australian Standards?
20. Can you confirm that the Commission's role is limited to those standards prescribed by regulation under the Competition and Consumer Act 2010?
21. According to your website:

'Mandatory safety standards are made for products that are likely to be especially hazardous. In making mandatory safety standards, the government protects consumers by specifying minimum requirements that products must meet before they are supplied. Safety standards require goods to comply with particular performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging rules....It is illegal for any supplier to provide a product in trade or commerce which is non-compliant with the requirements of a mandatory consumer product safety standard.' (Attachment B)

Given the risks associated with non-conformance, would there be a case for formply to be made a mandatory standard – prescribed by regulation under the Competition and Consumer Act 2010?
22. Currently the Commission's role in relation to this product is potentially limited to where false or misleading representations are made by suppliers that their products meet a standard for formply and they do not. Is that a fair assumption?
23. Mr Simon Dorries, General Manager of the Engineered Wood Products Association of Australia has made the following statements:

'Any manufacturer in any country can brand an Australian Standard without any testing or checks by anyone! This includes products used in critical structural applications where failure can result in collapse' and
'of equal concern is that Standards Australia does not licence or police the use of Australian Standard numbers on products.' (Attachment C)

Would the Commission agree with these statements?

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

20-21 November 2013

24. On its website Standards Australia states that it is “charged by the Commonwealth Government to meet Australia’s need for contemporary, internationally aligned Standards and related services.” And they confirm that they are “not responsible for enforcing compliance or certification with Australian Standards” (Attachment D)
25. A legislative solution to the problem of the importation of sub-standard building materials may sit within the Competition and Consumer Act – but the problem is that it does not appear to be policed and the ACCC does not have the resources (or intent) to tackle this issue.
- Wouldn’t extending the licensing and policing powers to Standards Australia lighten the workload for the ACCC and actually hand those powers to a body that is obviously qualified to investigate complaints of these types?
26. Returning briefly to the period of the investigation referred to earlier:
- Is the ACCC aware whether there were any job losses in the period preceding the investigation in the F14 plywood producing industry in Australia? I ask this because I’m looking at a report from Customs and Border Protection that States that in 2008-09 the Australian Industry suffered reduced revenue, reduced sales volume, price undercutting, price suppression, reduced profits and profitability, reduced production volume, reduced employment, deteriorating returns on investment and reduced attractiveness to reinvest with imports from Chile, China, Brazil and Malaysia being a contributing factor. (Attachment E1)
27. In understand the Boral Plywood mill in North Ipswich that produced F14 structural flooring closed on the 21st of July 2011 with the loss of 164 jobs. At the time the company sited cheap imports as a major factor leading to their closure. (Attachment E2)
28. Is the ACCC aware of these or other claims citing cheap and substandard imported building materials as major factors in the closure of Australian manufacturers?

#Further reference is available on page 39-41 of the 20 November 2013 transcript

Answers:

11. The trader informed the ACCC they had undertaken an investigation into its processes and obtained certification from SAI Global, a certifying authority, which indicated the product met the requirements for that grading at the time of shipping.
- The ACCC notes that the Standard AS/NZS 2269.1:2008 has been superseded by AS/NZS 2269.1:2012 Plywood – Structural – Determination of structural properties – Test methods.
12. The ACCC understands that the product was no longer being sold as F-14, but was downgraded to F-8.
13. The ACCC is not an expert in relation to these standards and specific details should be sought from relevant regulators within the building and construction sector. This said, it was apparent to the ACCC in the course of its consideration that the different Stress Grades affected the suitability of the plywood to different situations and uses. In the course of our assessment, we did not specifically identify circumstances in which any misclassification of the kind alleged would lead to safety issues, but would be pleased to receive information available.

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

20-21 November 2013

14. The ACCC did not make a public comment about the trader or the matter.
15. The ACCC formed the view to not take further action. In reaching this conclusion, the ACCC considered that the trader had informed the ACCC of their own investigation into its processes and obtained further certification from SAI Global, a certifying authority, that the product met the requirements for that grading at the time of shipping.
- The trader provided its customers with a statement requesting that all F-14 products be re-branded as F-8 while it conducted its own investigation and that no F-14 product be sold.
16. The ACCC understands that the independent certification was for AS/NZS 2269.0:2008 - Plywood - Structural - Specifications (Structural Plywood ((T&G Flooring)). The ACCC notes that this standard has been superseded.
17. The issue of legibility of a licence number did not form part of the ACCC's consideration.
18. In July 2013, the ACCC received complaints regarding two matters.
- The first complaint related to a trader supplying Formply, and the second related to LVL Beams, both involved allegations of misleading and deceptive representations regarding compliance with the relevant Australian Standard.
- Compliance Assessment Reports which contained NATA Accredited Testing that were provided to the ACCC indicated that the respective products did not comply with the relevant Australian Standard.
19. Since the initial complaint regarding the Formply and LVL Beams, the ACCC has not received nor are we aware of any further complaints concerning these specific products.
20. The ACCC does not have a role in enforcing the many thousands of voluntary standards that are not prescribed into mandatory standards and that may not relate to safety concerns.
- Though for completeness, we note that the ACCC's product safety role is broader than enforcing mandatory standards prescribed under the *Competition and Consumer Act 2010*. The ACCC has a range of product safety and consumer protection responsibilities.
21. The ACCC considers a wide range of factors in forming a view about the appropriateness of recommending a mandatory standard to the Commonwealth Minister. This includes considering available injury data to assess whether a product or product related service poses an unreasonable risk of injury to a person. The ACCC does not have evidence of injury associated with, or caused by Formply. Nor does the ACCC have information suggesting a widespread concern in this regard. Without such evidence there is no basis at this time for the ACCC to recommend making a mandatory standard under the *Competition and Consumer Act 2010*.
- It should also be noted that while the ACCC has a broad mandate for taking action in relation to safety issues associated with consumer goods it does not normally intervene in safety issues where there are specialist regulators responsible for those goods, or where the goods are not primarily consumer goods.
22. Yes subject to the matters discussed in the answer to Question 21.

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

20-21 November 2013

23., 24. and 25.

Mandatory requirements for building products are primarily the responsibility of state and territory building authorities. Information about mandatory requirements can be obtained from the Australian Building Codes Board; state building and planning regulatory authorities have responsibility for their enforcement.

26. The ACCC has no information on this issue.

27. The ACCC understands this to be a statement

28. The ACCC has no information on this issue.