



Senate Rural Affairs and Transport Legislation Committee

Inquiry into the Illegal Logging Prohibition Bill 2011

January 2012

The Timber Development Association (TDA) is an industry association representing all segments of the timber industry, from growing and harvesting to manufacture and supply of both Australian produced and imported timber products. Established in 1938 to promote the use and sale of Australian and imported timber, the TDA now concentrates on the technical advancement of timber within the construction sector by advocacy, research & development and educational projects.

The TDA supports the Australian Government's latest actions directed at restricting the availability of illegally logged timber and wood products to Australian consumers.

TDA, with the funding assistance of Department of Agriculture, Fisheries and Forestry (DAFF), worked constructively with the Australian timber and wood products industry to develop the draft generic code of conduct which has, at its core, due diligence will form the basis of supporting regulations. We continue to work with the timber industry within Australia and internationally on this matter.

As in our previous submission on the exposure draft Bill we note that the Bill is progressive in that it requires actions to reduce availability of illegal logged wood products at key points in the supply chain, thus avoiding costly and unnecessary chain of custody requirements to point of sale by downstream parties. Parties wishing to demonstrate to customers that the wood product they supply is not derived from illegally logged wood will be able to utilise these requirements and simple contractual requirements which are enforceable by Australian Consumer Law.

However, there are amendments to the Bill required. TDA recommended changes are set out as under the following headings:

- Section 2 Commencement
- Section 7 Definitions
- Section 10 & 16 Forfeiture
- Sections 14 & 18 Due diligence requirements
- Number of offenses & sanctions
- Associated regulations and industry resourcing.

Sections 2 Commencement

TDA notes that the Sections for offenses if a person imports or processes illegally logged timber (Sections 8 and 15 respectively) commence the day after the Act receives Royal Assent. TDA submits that this is too soon and they should commence at least 6 months after Royal Assent.

Six months would give importers and small domestic millers and forest owners/growers the time to ensure they comply. Many importers and small private property saw-millers and land-owners may not be aware of their “overnight” criminal liabilities; many wouldn’t know that the law applies to domestic millers. Also, logs may be held in a miller’s log yard for at least a year. Under the Bill as it stands, this means they could be liable for logs purchased prior to the Act coming into force, and additionally, could have these logs confiscated. TDA notes that the Illegal Logging Bill is not even listed as an item under “Domestic Forestry” on the DAFF web-site.

TDA recommends that the commencement of Sections 8, 10, 11, 15 and 16 be delayed by 6 months.

Section 7 Definitions

Illegally Logged

The term *illegally logged*, is defined as timber “harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.” This definition is vague and uncertainty creates unnecessary expense for industry.

TDA submits that the definition of illegal logging be changed to “illegally harvested” and should be further refined to “timber harvested in contravention of *applicable national and sub-national forest laws* in force in the place (whether or not in Australia) where the timber was harvested”.

TDA recommends that the definition for illegally harvested be changed to:

“means timber harvested in contravention of applicable national and sub-national forest laws in force in the place (whether or not in Australia) where the timber was harvested”.

Applicable laws

The applicable laws can be refined in following regulations however it would assist the industry if the definition of “applicable national and sub-national forest laws” were further refined. Below is a recommended definition of applicable laws based on the EU timber regulation definition.

TDA recommends that the following definition for applicable national and sub-national forest laws be included:

“means the legislation in force in the country of harvest covering the following matters:

- * rights to harvest timber within legally gazetted boundaries;*
- * payments for harvest rights and timber including duties related to timber harvesting;*
- * timber harvesting, including environmental, social and forest legislation where directly related to timber harvesting.*

Timber products

The term *timber product* is defined as “a thing that is, is made from, or includes, timber.” Timber is regarded as a product manufactured from wood for use as a building material. That is, timber is a wood product. The objective of the legislation is to restrict the supply of illegally harvested timber and wood products thus the focus solely on ‘timber’ is highly misleading. We strongly suggest the definition be changed to “wood products” which includes all wood products such as sawn timber, round wood, plywood, paper, wood fibre, wood furniture etc.

Many of the Harmonized System Codes (HS codes) with which much of this will be enforced refer to wood and articles of wood rather than timber.

The RIS has shown that the greatest value of wood products, from areas that are commonly from areas regarded as high risk of incorporating illegally logged wood, are actually wood products such as wood furniture and paper products, not sawn construction timber.

TDA recommends the term “timber product” be replaced with the term “wood product” and the following definition apply: “Wood product means a thing that is, is made from, or includes timber, wood or wood fibre.”

Section 10 & 16 Forfeiture

TDA notes that Section 10 & 16 of the Bill proposes that wood products may be forfeited to the Commonwealth and “dealt with or disposed of in a manner that the Secretary thinks appropriate...”

TDA submits that, under the existing definition of illegally logged, if any Government agency (including the Commonwealth) were to auction a wood product that they had seized from one party (because they had been harvested in breach of applicable laws) these wood products would not be able to be purchased by another party and processed or imported into Australia as they have been illegally harvested. This is despite the fact they have been legally purchased.

TDA recommends that a clause be included in the Bill to the effect wood products that have been forfeited to the Commonwealth, or another government, for breaches of illegal logging laws, that the wood products is able to be imported or processed provided that they have been legally purchased.

Sections 14 & 18 Due diligence requirements

We note the requirement for due diligence and we support this inclusion. TDA considers it essential that importers and domestic processors implement a standardised due diligence system to minimise the risk of importing or processing illegally logged timber and wood products.

Rather than set out what might be acceptable in following regulations it would be more appropriate if minimum criteria for due diligence systems be included in the Bill. TDA wishes to highlight below the following core criteria developed a part of the generic Code of Conduct project:

- Public Commitment
- Director Level responsibility

- Complete Supplier and Supplier Product Screening (cover all products)
- Standard Questionnaire and Objective Assessment System
- Objective Evidence
- Target Setting & Continuous Improvement
- Supplier Feedback
- Annual Reporting
- Credible Documentary Evidence
- Independent Third-party Auditing.

The EU timber regulation sets out minimum criteria for due diligence systems. These minimum criteria can be summarised as:

- measures and procedures providing access to the information concerning the company's supply of timber or timber products;
- risk assessment procedures enabling the operator to analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber;
- risk mitigation procedures that are adequate and proportionate to minimise effectively risk.

Therefore there is sufficient knowledge existing about what criteria are essential for an adequate due diligence system.

TDA recommends that importers and processors be required to implement a due diligence system that meets core criteria and that minimum core criteria be included in the Bill.

Negligible Risk – Definition

While the term “negligible risk” of illegally harvested timber is not included in the Bill the term is used in the accompanying EM and is a key term used in the EU timber regulation which DAFF propose to use as a model in developing the regulations accompanying this Bill. Senators should be aware that “negligible risk” is undefined and causes considerable angst in the wood products industry in Europe. Senators should also be aware that the most common forest certification schemes of Forest Stewardship Council (FSC) and Programme for Endorsement of Forest Certification (PEFC), which endorses the Australian Forestry Certification Scheme, use the terms “low risk” and “high risk”.

Thus, unless carefully worded, even wood products certified to the FSC or PEFC endorsed standards may not meet minimal risk criteria set out in proposed regulations.

TDA recommends that the Committee closely examine the term “negligible risk” especially in relation to proposed regulations and the impact of its use on existing common forest certification schemes.

Number of offenses and sanctions

There are a number of offenses and sanctions in the Bill for various offenses. The Bill also cites that there will be additional offenses and sanctions in forthcoming regulations. An importer and processors will have to undertake a number of prescribed actions to avoid offences and sanctions. TDA submits that there are lots of “sticks” and no “carrots”. This is in contrast to the US Lacey Act amendments where there are reductions in the ultimate sanction if a company has done all the right things yet is subsequently found to have imported or processed illegally logged timber product.

TDA recommends that, at a minimum, a clause should be included in the Bill that compliance with due diligence requirements, will significantly mitigate any penalty if an importer or raw log processor is subsequently found to have imported or processed illegally logged wood products.

Associated regulations and industry resourcing

The associated detailed regulations will be critical to the effectiveness and efficiency of this legislation when enacted. Regulations, such as the due diligence requirements, developed by those with little or no knowledge of the workings of the respective wood products industry could seriously undermine the viability of some companies.

To ensure that importers, domestic raw log processors and supplier countries have the resources and capacity to develop these regulations and to implement them it is essential that they are well supported so that their ongoing viability is not threatened.

TDA recommends that importers and processors, and their respective industry bodies, be given a predominate role in the development of the regulations to implement the objectives of the legislation and that they be provided with adequate resources to setup and develop capacity of the industry and supplier countries to undertake these requirements.

TDA looks forward to contributing to the creation of effective and efficient means of controlling the availability on the Australian market of illegally logged wood and timber products. As such, TDA is available to discuss these issues in more depth with the Committee.