



## **Submission to: Senate Rural Affairs and Transport Legislation Committee**

### ***Inquiry into the Illegal Logging Prohibition Bill 2011***

***6 December 2011***

#### **1.0 Purpose**

In preparing this submission the Australian Timber Importers Federation Inc (ATIF)<sup>1</sup> wishes to ensure that the Senate Rural Affairs and Transport Legislation Committee is appreciative of the ATIF's key residual concerns in relation to the *Illegal Logging Prohibition Bill 2011*(the Bill). This submission provides both the context and specific suggested amendments to the Bill.

#### **2.0 Background summary**

The following points briefly summarise the increasing importance of imported timber products to the Australian economy, housing objectives and employment in the building and construction industries.

1. The Australian economy increasingly needing to be able to freely trade and import timber products to assist economic growth. The proposed legislation needs to complement, rather than restrict this objective.
2. Imported timber products are growing in significance and will be central to the performance of the Australian building and construction industries in the future. This reality will include keeping housing affordability under check and supporting thousands of building and construction industry jobs.
3. A recognition that imported timber products are essential because of their cost and utility benefits, or because there is simply no Australian produced

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<sup>1</sup> The ATIF is the peak national body representing the business interests of timber and wood-based product importing companies. Membership of ATIF is available to companies where timber and wood-based product importing is a significant component of their business.

ATIF company members collectively handle a substantial percentage of the solid timber products (sawn timber, panel products, plywood, engineered wood products, componentry and veneer) imported into Australia.

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substitute products. The proposed legislation needs to support rather than diminish the development of an effective timber product importing sector.

4. Based on ABARES<sup>2</sup> data, consumption trends for timber and wood-based products for 2009-10 confirm that the value of timber imports increased by six percent to almost \$430 million and that volume increased by 13 per cent to about 750,000 cubic metres in line with increased domestic demand for timber products<sup>3</sup>.
5. While Australia's population has been growing at a record rate in recent years, new home building has stalled. The resulting imbalance in supply and demand has created a housing shortage. Using estimates of the annual gap between underlying demand and dwelling completions, the Housing Industry Association (HIA) confirms that Australia has a substantial housing construction backlog. As at June 2011, the HIA estimates that Australia had a cumulative housing shortage of 229,500 dwellings<sup>4</sup>.

The reality that imported timber products will continue to be an increasingly critical ingredient of Australia's housing construction industry has sharpened the focus on the importance of a strong timber importing sector to enable the country to deal with its housing shortage. If Australia is going to deal not only with its housing construction backlog, but with new housing starts that are predicted by the HIA to exceed 180,000 dwellings a year timber product importers will be key players.

6. It is apparent that the Bill essentially 'delegates' much of the detail and administrative procedures to be developed as regulations, notably as required in Sections 12-14. It will therefore be essential that this development is undertaken in close consultation with the timber importing industry, being one of the key industry sectors that will have the responsibility of implementing the Bill and bearing the costs of due diligence and related processes.
7. Timber importers accept that they will be required to bear the costs of maintaining due diligence, documentation, auditing and accreditation control systems. However, it is asserted that where elements of such systems do not exist sufficient to meet the requirements of the proposed legislation and need therefore to be developed the Government must fund such development to give effect to their broader illegal logging policy goals.

<sup>2</sup> [http://www.abares.gov.au/publications\\_remote\\_content/publication\\_topics/forests](http://www.abares.gov.au/publications_remote_content/publication_topics/forests)

<sup>3</sup> The volume of 'sawnwood' imported into Australia in the September and December quarters of 2010 was 31 per cent higher than in the corresponding period in 2009. Imports from New Zealand, traditionally the largest supplier of softwood sawnwood to Australia, accounted for a relatively small proportion of this increase, while imports from European countries accounted for the majority of the increase. Imports from Chile, which has not been a major supplier in the past, also rose notably in the same period.

<sup>4</sup> <http://hia.com.au/media/~media/Files/MediaMicrosite/Media%20Releases/Economics/Building%20Approvals%20Hit%20two%20Year%20Low%20in%20June%202002082011.ashx>

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### 3.0 Due diligence and the *US Lacey Act*

Given that the Bill is centred around due diligence and risk assessment (with third party audit), sections of the legislation that relate to these requirements need to recognise and provide some flexibility to accommodate the probability assessments that risk identification, mitigation and decision making are really all about.

Australia needs to be vigilant that the 'errors' of the *US Lacey Act* are not repeated. There appears to be a complete shambles in the US at the moment with possible prosecution of Gibson Guitars under the *Lacey Act* when the company has used FSC certified wood-based components and the reality that allegations of illegal activity relate to possible breaches of Indian employment and/or value-added manufacturing laws.

This situation has generated substantial media attention and made a mockery of the *Lacey Act*. There is now a growing voice in the US to have the Act amended. We want to avoid such a situation arising in Australia therefore the following two points deserve particular attention in the final consideration of the Bill by the Senate Rural Affairs and Transport Legislation Committee.

#### 3.1 *Prohibition - strict liability*

A person should not be held liable for knowledge of illegal acts committed by unknown third parties, often far removed up the supply chain, in foreign jurisdictions (for imported products) and for which there is no definitive product test.

ATIF believes that it is crucial that the Bill says "A person commits an offence if they knowingly import or trade products containing illegally logged timber".

Such a definition would be in accordance with the various State laws regarding receiving stolen goods, the closest type of law to the *Illegal Logging Prohibition Bill 2010* for example:

##### a) *NSW Crimes Act 1900 - Section 188*

"188 Receiving stolen property where stealing a **serious indictable offence**

(1) Whosoever receives, or disposes of, or attempts to dispose of, any **property**, the stealing where of amounts to a **serious indictable offence**, knowing the same to have been stolen, shall be guilty of a **serious indictable offence**....."

##### b) *Victorian Crimes Act 1958 - Section 88*

"88. Handling stolen goods

(1) A person handles stolen goods if **knowing or believing** them to be stolen goods he dishonestly receives the goods or brings them into Victoria, or

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dishonestly undertakes or assists in bringing them into Victoria or in their retention, removal, disposal or realization by or for the benefit of another person, or if he arranges to do so.”

### c) **Queensland Criminal Code 1899 – Section 433**

“433 Receiving tainted property

(1) A person who receives tainted property, **and has reason to believe** it is tainted property, commits a crime.”

## 3.2 **Definition of illegal logging too broad**

It is held that the definition of illegal logging should be “timber harvested in contravention of **national and sub-national forest laws** in force in the place (whether or not in Australia) where the timber was harvested, **as enforced by that national/sub-national government and/or determined in the jurisdiction of that country**”

The object of the law is to ensure compliance with forest laws. To expect importers or the Australian timber and wood products supply chain to attest that products have been produced in accordance with non-forest laws is inconsistent with this goal. No other product has to be shown to be compliant with such a potentially wide range of law.

## 4.0 **Specific amendments to the Bill**

It is recognised that the Bill has effectively dealt with a number of concerns raised in relation to the exposure draft of the Bill. This progress is acknowledged and only key residual concerns are dealt with below.

### 4.1 Section 7(Definitions) **illegally logged** presently reads:

*“In relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.”*

Be amended as follows:

***In relation to timber, means timber harvested in contravention of national and sub-national forest harvesting laws in force in the place (whether or not in Australia) where the timber was harvested, as enforced by that national/sub-national government and/or determined in the jurisdiction of that country”***

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**4.2** Part 2 - Importing Section 8(a) ***Importing illegally logged timber*** presently reads:

“the person imports a thing; and”

Be amended as follows:

***The person knowingly (or intentionally) imports a thing; and***

Note that the same amendment should also be make to:

- i. Section 9(1)(a)
- ii. Section 12(a)
- iii. Section 13(a)

**4.3** Section 14 (Due diligence requirements for importing regulated timber products) (3)(a)(iii) presently reads:

“evidence of compliance with the laws of the country in which timber was harvested;”

Be amended as follows:

***evidence of compliance with the forest harvesting laws of the country in which timber was harvested;***

**4.4** Section 14 (Due diligence requirements for importing regulated timber products) (3)(i) presently reads:

“publishing information”

Recognising that *it is* the Government that intends to publicly disclose summarised information, be amended to read:

***provide information for publication.***

**4.5** Section 14 Due diligence requirements for importing regulated timber products) (5) presently reads:

“The regulations may provide for due diligence requirements for importing regulated timber products to be satisfied, wholly or partly, by compliance with specified laws, rules or processes, including the following:

- (a) laws, or processes under laws, in force in a State or Territory or another country;

To avoid the lack of specificity that has given rise to some of the present difficulties with the *Lacey Act*, be amended to read:

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***The regulations may provide for due diligence requirements for importing regulated timber products to be satisfied, wholly or partly, by compliance with;***  
(that is delete: *specified laws, rules or processes, including the following:*)

***(a) laws, or processes under laws related to forest harvesting in force in a State or Territory or in contravention of national and sub-national forest harvesting laws in force in another country as enforced by that national/sub-national government and/or determined in the jurisdiction of that country;***

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