

Comment from:

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**Author: Rough trade; How Australia's trade policies contribute to illegal logging in the Pacific Region** The Australia Institute, Institute Paper No. 5 October 2010.

I have read the proposed legislation with interest. The main mechanism for implementation is the establishment of certifiers with the power to inspect shipments of timber or wood-based products when they have reason/data to think that a shipment may be suspect.

I am concerned this mechanism will fail to achieve the objective of the legislation for the following reasons:

1. The mechanism of using certifiers without requiring importers to provide full information on source of wood and chain of custody will be insufficient to capture more than a small amount of illegally-sourced timber
2. The cost of establishing a new class of certifiers, and arming them with sufficient information to identify illegally-sourced timber is likely to be prohibitive
3. Penalties for importing illegally-sourced timber are insufficient to deter deliberate import of illegal-timber

While it is very good indeed that the Government recognises the problem of illegal logging and proposes legislation to ban the import of illegally logged timber and wood products, I suggest a more effective and efficient regulatory response would include the following elements:

1. Use existing Customs procedures rather than establish a new class of certifiers
2. Require importers to supply documentation on the species and provenance, meaning source and chain of custody for all timber and wood-product imports
3. Assist companies to follow the new legislation and in educating their customers as to why such measures are important
4. Assist Customs with additional resources and consider adding DNA-testing capabilities
5. Empower Customs to confiscate inadequately documented or fraudulent shipments so that penalties for illegal imports will be strong enough to be disincentives
6. Make Australian laws as strong as those of the EU and the USA and use similar systems where possible to facilitate commercial dealings internationally.

These reasons and suggestions of alternative approaches to stopping the import of illegally sourced

timber and wood products are explained below:

- **Certifiers will not have enough information to identify illegally-sourced wood.** The proposed certifiers who would be empowered to conduct inspection raids seem to be similar to drug enforcement actions. However, unlike contraband drugs or other totally illegal products, most timber and wood product imports are legal, and determining which have been illegally sourced can be difficult. The draft legislation talks about certifiers being empowered to inspect material, books and records, but inspecting material will not reveal legal status, and without requirements that importers know and report (see below) wood provenance, records are unlikely to help either. Illegal wood is often mixed in with legal at various points along a marketing chain from that includes harvest, transport, storage and processing. Illegally-sourced wood is particularly likely to have been transhipped across borders and mixed in with legitimate materials. For certifiers to find the information on all shipments of timber and wood products to Australia determine which among them may be questionable would be an enormous task for which they are not likely to be equipped. The resources needed for researching and then carrying out end-point raids and providing sufficient evidence to prosecute would be huge.
- **The proposed legislation does not require documentation to be presented with country of origin and chain of custody clearly spelled out, but it clearly should.** Importers will know at least some of this information in any case, and they are in a much better position to require their suppliers to provide the complete provenance of their timber and wood products than are end-point inspectors. Importers should be required to produce this information as part of the importing procedure. This is the case in the US under the Lacey Act. In the EU, importers must have that information and disclose it to authorities when requested.
- **Rather than creating a new bureaucracy of certifiers, using existing Customs procedures and providing extra resources to Customs would be more efficient and arguably more effective.** Under existing Australian Customs law, one class of products can only be imported with specified paperwork that must be completed before it leaves the exporting harbour for Australia. Timber and wood products could be handled under this procedure. Additional resources for developing and handling such documentation could be provided to Customs, the organisation that already carries out such procedures.
- **An innovative way that Government might support Customs would be to instigate a spot checking system at the border using DNA testing of wood.** Documents can be forged and, in fact, often are, and while custom officials can be expected to have considerable skills in spotting dubious materials, forged paperwork can be very well done and difficult to detect. DNA testing for wood is now sufficiently developed as to be low priced enough that some commercial importers in Australia are already using it. It can be used to verify wood species, and for some commercially-traded species, it can prove country and even place of origin. This capability would be very useful for checking any shipments that were suspected of miss-labelling. In addition, if it was known that Customs could conduct DNA tests on some

imported shipments at will, this would have a disincentive effect similar to that of random breath tests for drivers – the knowledge that there is an increased risk of being caught when breaking the law.

- **Government could help the importing companies to ensure their imported materials are legal in various ways, including by providing information on risk-assessment of source countries and assistance in conforming to the new requirements.** Industry should not be relied upon to police itself in this matter (and certifiers, if used, should not come from industry). Government can provide a “level playing field” among importers by monitoring and enforcing the importation codes. Some companies already make an effort to educate their customers as to why certified wood is a better choice and some do not. Government assistance in this matter would also help to steer public demand away from artificially low-priced timber and wood products provided from illegal sources.
- **Customs should be empowered to seize questionable timber and wood product imports.** The proposed legislation includes the concept of fines and jail terms, but generally fines are not likely to be sufficiently high to be strong incentives. Jail terms for Australian importers are probably not the most effective way to solve the problem but could be considered for repeat offenders. It would be simpler and more effective to confiscate questionable shipments, as it is the high value of the timber and wood products that drives the illegal market and may – sometimes – lead importers not to question their suppliers closely. A risk of forfeiting shipments would change the motivations of all involved.
- **Australia should move to make its laws on wood imports similar to those of the EU and the USA where practical.** Australia is not alone in developing legislation to avoid importing illegally cut timber and wood products made from it; in fact, Australia is coming a bit late to this. Concern for the wide-scale destruction of remaining forest areas has led both the EU and the USA to develop strong legislation on imports of timber and wood products and implementation has begun. It is in Australia’s interest to avoid becoming a country known for weak wood import laws. It makes sense for Australia to work alongside the EU and the USA and to implement a system that will be as robust as theirs – but to achieve that, this proposed legislation will have to be strengthened. As much trade is international, it will simplify work for Australian industry if similar, or at least compatible, certification systems are used.

I believe that stopping the trade in illegal timber is an important first step in the longer-term goal of sustainable management of remaining important forested areas. It is very good to know that Australia will be doing its part.

Thank you for your consideration of this comment.

*Caroline Hoisington, Sydney, 4 May 2011*