



Senate Rural Affairs and Transport Legislation Committee

**Inquiry into the exposure draft and explanatory memorandum of the
Illegal Logging Prohibition Bill 2011**

May 2011

The Australian Forest Products Association (AFPA) provides the following submission on the Exposure Draft and Explanatory Memorandum of the *Illegal Logging Prohibition Bill 2011*.

AFPA was formed by the merging of the National Association of Forest Industries (NAFI) and the Australian Plantation Products and Paper Industry Council (A3P) on 14 April 2011, and is currently in a transitional phase. AFPA represents the Australian forestry, wood and paper products industry's interests to governments, the general public and other stakeholders on matters relating to the sustainable use of Australia's forests and the profitable manufacturing and marketing of wood and paper products in Australia.

AFPA supports efforts by the Australian Government to address the issue of the importation of illegally harvested timber and the many problems that arise from it. Illegal logging is a serious concern as it threatens the viability of Australia's own forest industry and the livelihoods of employees and communities that depend on the industry. Illegal logging also undermines international efforts to address climate change and the stability of regional ecosystems.

AFPA acknowledges the work the Department of Agriculture Forests and Fisheries has undertaken in working to implement the Government's policy initiative. There are a range

of complex policy issues to be addressed in developing an effective policy response. AFPA will continue to support such efforts.

INDUSTRY CONTEXT

The forestry, wood and paper products industries make a significant contribution to the national economy, with flow on benefits to many regional economies and communities across Australia.

The gross value of turnover in the forest products industry was estimated at around \$22 billion in 2009 (ABARES 2011), with total wages and salaries paid of over \$3 billion in recent years. In terms of value adding - as a direct measure of the industry's contribution to gross domestic product - the forest industries contribute \$7 billion, representing around 6.7 per cent of the manufacturing sector (ABARES 2011).

Total employment in 2010 is conservatively estimated as 75,800 people, based on the Australian Bureau of Statistics employment categories of: forestry and logging (~10,000); wood product manufacturing (~45,000) and paper and paper products (~21,000). The total number of people employed in the forestry and wood products industries, based on a wider survey of businesses dependent on growing and using wood, is estimated to be about 120,000 people.

In terms of production, the main outputs of the industry comprise: sawnwood (4.73 million m³); wood based panels (1.78 million m³) and paper and paperboard (3.31 kt), with a total log harvest of around 25 million m³ in 2008-09 (ABARE 2010).

In 2007-08, the industry value added from the paper sector was \$2.9 billion and from the sawnwood and other wood product manufacturing sectors was \$4.3 billion (ABARE 2010).

While the paper and wood based panel sectors tend to be based on large manufacturing plants, the sawmilling sector comprises a combination of large and small mills with relatively higher levels of family ownership. There are an estimated 610 sawmills in Australia, with just over 500 in the native forest hardwood sector and 100 in the softwood sector.

In 2009/2010 Australia exported around \$2.26bn of forest and wood products and imported around \$4.20bn of such products resulting in a trade deficit of over \$1.94bn. Forest and wood products imported, in order of importance by value in 2009/2010, were:

- Paper and paperboard (\$2.17bn);
- Miscellaneous forest products (\$602.7m);
- Paper manufactures (\$562.8m);
- Sawn-wood (\$429m);
- Wood-based panels (\$249.9m);

- Pulp (\$177.8m).
(Source: *Australian Forest and Wood Product Statistics, ABARES*)

Paper and wood products are internationally traded commodities. Australian paper and wood products manufacturers face significant international competition, and increased incidence of competition from traders selling below 'normal value' products sourced from manufacturers that have a cost base that may not reflect the 'true' cost of inputs (environmental/financial/social/employment/safety inputs).

Economic globalisation has increased this competition, and recently the global financial situation has added increased incentive for activities that constitute dumping. Australia's commercial environment is completely exposed to international trade and is not a level playing field.

Australian industry has every right under existing international trade rules to continue to have World Trade Organisation (WTO) sanctioned anti-dumping measures to counter predatory pricing, and underpin fairness in trade outcomes. As such, Australian industry should have the right to compete on a level playing field, and consumers need some reassurance that they are purchasing legally sourced paper and wood products with measures in place that restrict imported products from illegally logged sources.

Against this background it is important to recognise that, while appropriate measures to address illegal logging can benefit the domestic forest and wood products industry by addressing cost and sustainable forest management inequities, there is also the threat that it would further increase the cost and regulatory burden on the domestic industry which is already required to meet the highest standards.

AFPA notes that efforts aimed merely at achieving greater transparency in timber import purchasing are no replacement for Australian sustainably grown and processed wood products, which meet strict State and Commonwealth regulatory measures and, for most production, are internationally recognised through accredited Sustainable Forest Management (SFM) or Chain of Custody (CoC) certification. Certification, which provides greater consumer confidence, is voluntary and additional to the strict Australian regulations and requirements being contemplated by the Government's proposal. Importantly, illegal logging is not a problem for the domestic industry.

Care must be taken with the development of the illegal policy framework so that terms 'sustainability' and 'legal verification' are not equated to be at the same level by policy makers and consumers of wood and paper products in Australia – they are not. In many cases a sub-component of internationally recognised accredited SFM or CoC certification schemes is legality verification.

Therefore, AFPA recommends as a fundamental policy principle that Australian Government measures to address illegal logging overseas should not place any additional unnecessary impost on Australia's sustainable forest and wood products industry. It is equally important for Governments and industry to promote the economic and environmental benefits of using locally grown and sustainably produced wood products, through timber marketing and related initiatives. Moreover, the great variety in the nature and scale of industry is an important consideration in developing an appropriate and flexible policy response.

THE EXPOSURE DRAFT AND EXPLANATORY MEMORANDUM

As a general comment AFPA is disappointed in the stakeholder consultation pathway taken by the Government with the draft Bill being placed directly into Parliament, albeit directed immediately to a Senate committee process. Importantly, this is the first time we have seen detailed text (a clear mechanism) from the Government on their plans to address illegal logging. While there have been various consultative processes they have been general in nature and have not provided an opportunity for meaningful discussion and negotiation of the design of specific mechanisms and the legislation and regulations required to bring them into being.

A more constructive alternative would have been to consult stakeholders and to include their comments in the exposure draft prior to placing it into Parliament. This would have then allowed for a further refining of the draft Bill before the Parliamentary process. As it is, industry has been presented more or less with a *fait accompli*, from which it must try to seek improvements via submission. While much of the detail may be deferred to regulations to be developed subsequently, the overarching legislation sets the framework and should not be passed until all stakeholders have a better understanding of the detail.

Industry has stated previously to Government that any mechanism proposed to address illegal logging should be risk based, flexible and not prescriptive so that producers and importers can demonstrate compliance as efficiently and effectively as possible. The onus should be placed on importers and domestic processors to demonstrate that they have systems in place to ensure that the wood they process or the products they import are not sourced from illegal logging. Those who already comply with stringent and costly regulatory requirements will find it much easier to meet such an obligation.

AFPA is concerned that the draft Bill proposes an overly bureaucratic mechanism for addressing the problem that lacks flexibility, and threatens to impose a complex administrative burden on importers, domestic industry and government that will not achieve the desired outcome in a cost effective and optimal manner. As it stands it threatens to diminish the competitive position of legally sourced domestic production.

The Bill proposes a relatively inflexible approach based on a requirement for companies and other organisations placing timber on the Australian market in Australia to be signatories to Commonwealth-accredited codes of conduct, backed up by a complex, onerous and potential costly bureaucratic system of licensing and oversight. There are a variety of other means besides codes of conduct, licensing, and complex bureaucratic processes for achieving the Government's policy aim.

The Commonwealth Office of Best Practice Regulation (OBPR) notes that "Well designed regulation has a vital role to play in overcoming some of the problems that lead to inefficient or inequitable market outcomes. However, 'well designed' is an important qualifier - poorly designed regulation may not achieve its objectives, and can impose costs on businesses and the community more broadly." The OBPR also notes the requirement for "encouraging transparent, timely and meaningful consultation with affected parties."

The Government's proposed model threatens to place too great a regulatory and cost burden on business, via the establishment of a complex and onerous bureaucracy for the implementation of its policy, involving:

- An exclusive focus on the creation of codes or practice (CoP).
- Government endorsement and accreditation of CoP.
- Auditing of importers/processors compliance with CoP.
- CoP administration bodies.
- Independent third party auditors.
- Annual reports by CoP administration bodies.
- Pre-audit of CoP.
- Mandatory licensing of importers and processors. (Note: The potential number of targeted businesses could be in the thousands subject to the spectrum of regulated wood and paper products. Some State Governments previously licenced all sawmills within their jurisdiction and some may still do. However, this has subsequently been seen to be an unnecessary regulatory burden).
- Government outsourcing to industry the resolution of a problem, via a costly, complex and inflexible process.

As such, AFPA does not support the Government's proposed approach for addressing the issue.

AFPA PROPOSED ALTERNATIVE POLICY FRAMEWORK

AFPA supports a legislative approach which creates a specific offence of knowingly processing logs or knowingly importing wood based products that are obtained from an

illegal source. However, AFPA is also aware that this offence will be very difficult to prove except for in the most extreme cases.

AFPA therefore supports the creation of a second requirement/offence whereby the legislation would establish a mandatory requirement that all domestic wood processors and importers have in place a risk-based due diligence system to ensure that they do not process or import illegal timber products. This mandatory requirement would place the onus squarely on the shoulders of the Directors and Officers of all relevant companies.

The legislation would set out the basic requirements for an effective “due diligence” system that provides scope for situation specific responses, developed by industry which is characterised by great diversity in the nature and scale of its operations. Associated regulation could further develop these basic requirements. Such a system would be:

- Industry/sector specific, with “due diligence” systems tailored to the needs of industry sectors/participants as appropriate;
- Risk-based (i.e. dealing with higher risk sources in a more stringent manner);
- Comprehensive (i.e. cover all products);
- Documented;
- Auditable;
- Required to be considered and endorsed by responsible officers (Directors);
- Responsive. So that if requested by industry, government could approve certain systems as “deeming to comply with the requirements” (e.g. some importers may want to operate a code of practice which is appropriate to a specific group of businesses);
- Flexible and supportive of existing certification processes; and
- Required to be reviewed and updated on a regular basis.

One “deemed to comply” option could be demonstration that an importer/processor’s logs or imports come from sources certified via a credible SFM certification system (as defined in regulations i.e. AFS/PEFC or FSC), with the necessary third party certified chain of custody arrangements.

As noted at pages 10-11 in the Explanatory Memorandum, approximately 90 per cent of timber produced in Australia is sourced from certified forests, with the remaining 10 per cent supplied by small processors who are required to comply with the stringent state and territory regulations for growing and harvesting wood. The Government’s approach needs to recognise and allow Australian industry and importers to employ and build on this system.

AFPA would argue that any future system being considered must recognise and complement the compliance regime already operating in Australia, and not impose additional regulatory requirements on domestic industry.

AFPA notes that it is simpler, cheaper and more effective for industry to develop its own situation specific “due diligence” systems and for these to be randomly audited by Government using existing inspection and compliance services. The “attributes” of such due diligence systems would be set out in the regulations and, importantly, they would be no less stringent than what would be established via the proposed code of practice and licensing system.

In fact, the Government’s proposed code of practice and licensing system approach will duplicate the existing regulatory regime and SFM and CoC certification processes, and will force industry to implement a costly duplicate system that adds no value and potentially ‘devalues’ or ‘confuses’ SFM and CoC certification processes.

The requirement for individual companies to have in place a mandatory due diligence system as proposed above will free the Commonwealth Government from the cost and administrative burden of operating a bureaucratic licensing and regulatory system. The Government will be able to direct its resources to monitoring imports, randomly auditing processors and importers, both with respect to the legality of their wood sources and the appropriateness of their due diligence systems, and ultimately pursuing legal action where this is required.

EXPORTER OR PRODUCER FOCUS

Importantly, such an approach could also enable regulation of imports via requirements on exporters to Australia. Local producers and processors, as noted, already submit to compliance with various Commonwealth and state laws, and to a rigorous certification regime. This system is already part of the cost burden of local producers. This is a cost burden that is currently significantly lower, or absent, for timber imported from a number of “high risk” producer countries.

Consistent with WTO requirements, AFPA would encourage the Government to explore options for seeking proof of compliance at the point of export or import. As such, the Australian Government would be required to sight, record and maintain documentation from countries proving that timber and timber products imported for the Australian market are legally produced.

This way compliance costs would be attributed to overseas producers, as they are in Australia, and would become part of an exporter’s cost of production. Hence, capacity

building measures in key producer countries should be part of an overall illegal logging policy.

Consequently a much simpler and less cumbersome regulatory regime would be enabled where a supplier of timber product would simply be required to show proof of compliance with the regulatory standards of the country of production.

For Australian producers this could easily and cost effectively be achieved due to the already very high levels of legal SFM. Such documentation would also assist Customs, Border Security and DAFF border inspection processes and simplify the requirements for timber importers.

As such, AFPA also recommends that the Committee seriously consider a change in the approach to regulation of timber imports, to one that:

1. Builds capacity in both exporting countries and Australian key trade agencies and acts to ensure that all timber exported to the Australian market is, as quickly as possible, required to meet the same rigorous standards of legality as is required of Australian producers.
2. Recognises and complements the compliance regime already operating in Australia, and not impose additional regulatory requirements on domestic industry.
3. Provides documentary proof of the legality of their operations and thus the ability to sell product legally on the Australian market.
4. Requires the Commonwealth Government to develop (in co-operation with key producer countries) a standard form that enables a timber exporter to state the required information relating to species, region and country of origin, quantity, name and address of supplier, name and address of the trader to whom the timber and/or timber products have been supplied, and verification that the timber and/or timber product has been legally produced. Such a requirement would still address the issues raised in the Explanatory Memorandum, at pages 5-6, under 'Defining illegal logging and associated trade' and would provide the necessary pressure to get key producer countries to 'lift their game'.
5. Uses existing regulatory and inspection processes (e.g. Customs and Border Security) to ensure the relevant documentation accompanies imported timber and provides proof of legality. Otherwise they will not be accepted for import.
6. Is backed up by a random audit of timber importers/processors to ensure that the necessary documentation is being maintained.
7. Imposes corporate and individual fines for non-compliance, rather than gaol.

CONCLUDING COMMENTS

AFPA is concerned about the imposition of a penalty for up to five (5) years imprisonment if a person imports a regulated timber product which includes illegally logged timber. Such a penalty should be reviewed in light of similar civil and/or criminal offences.

Given the size and growth of “Category III highly processed/composite timber and wood products from multiple sources” it is unreasonable for Government to expect industry to determine, at the risk of gaol, what it is having difficulty determining itself. See Part 2, Division 1, Section 6 of the draft Bill. Moreover, the definition of a “person” might also need to include reference to “corporations”, and “knowingly” be added to s6 (1)(a) such that “the person knowingly imports a thing;”.

Whilst AFPA has raised a number of concerns with the Government’s proposal, it does support action on illegal logging. AFPA looks forward to contributing to the creation of an effective, efficient and flexible means of controlling the import of illegal timber and timber products.

Importantly, the issues raised by the Government’s policy are complex with the potential to have a major impact on the viability of domestic operations, particularly given the rapidly appreciating Australian dollar, and concerns about dumping, predatory pricing and international subsidy activities. As such, AFPA would be available to discuss these issues in more depth with the Committee.

**Australian Forest Products Association
May 2011**

References

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