



## SUBMISSION TO THE SENATE INQUIRY ON THE ILLEGAL LOGGING PROHIBITION BILL 2011

The American Hardwood Export Council (AHEC) welcomes the opportunity to submit comments to the Senate Rural Affairs and Transport References Committee Inquiry into the Illegal Logging Prohibition Bill, 2011. AHEC is the leading international trade association for the American hardwood industry, representing companies and trade associations engaged in the export of a full range of U.S. hardwood products, including lumber, veneer, plywood, flooring, moulding and dimension materials.

AHEC supports the objective of the Bill to reduce the harmful environmental, social and economic impacts of illegal logging. AHEC and its members have considerable direct interest in the effective, efficient and equitable implementation of the Bill. U.S. exports of hardwood lumber and veneer were valued at A\$11 million in 2011 and have been rising in recent years. AHEC welcomes the approach to regulation of illegal wood imports as set out in the Bill placed before the House of Representatives on 23 November 2011 on the following grounds:

■As an organisation representing companies exporting products into over 60 countries worldwide, AHEC greatly appreciates the steps taken by the Australian government to harmonise their regulatory requirements with that of other major timber consuming countries. We are encouraged that the Bill presented on 23 November is, as far as possible, aligned to the requirements of the U.S. Lacey Act 2008 Amendment and the EU Timber Regulation of November 2011.

■AHEC supports the inclusion of a prohibition on imports of illegally logged timber into Australia in which the burden of proof lies with the prosecuting authority and not with the importer. For reasons set out below, AHEC believes the Australian government is right to resist the urge to reverse the burden of proof, for example by imposing impractical obligations on the trade to provide proof of legality at point of entry into Australia.

■AHEC supports the inclusion of a requirement for due diligence on the part of the timber importer and that regulations for due diligence “must be prescribed only for the purposes of reducing the risk that imported regulated timber products are, are made from, or include, illegally logged timber” (Division 2, 14, (2)). The use of a risk based approach to due diligence builds on existing best practice for responsible sourcing in the international forest products sector, ensures there is no imposition of unnecessary obstacles to trade in regions where there is demonstrably negligible risk of illegal logging, and facilitates the efficient targeting of relatively limited resources for independent legality verification to those regions where there is a potentially high risk of illegal logging.

■AHEC welcomes the statement in the Explanatory Memorandum to the Bill (Under clause 9) that it is the intent of the government to extensively consult with industry, including importers, in the development of regulations setting out requirements for due diligence. The process of introducing the Illegal Logging Prohibition Bill, alongside the U.S. Lacey Act Amendment and the EUTR, has encouraged a major process to develop efficient and effective due diligence systems which is still on-going. This is a very complex and, at this stage, fluid process in which understanding continues to evolve. AHEC believes it is appropriate that the Bill does not go too far to define documentation requirements or procedures for due diligence that might quickly become redundant as best practice evolves. These requirements are better established in regulations following regular consultation with industry and other stakeholders.

■AHEC welcomes the Australian government’s interpretation of the second recommendation of the Senate Committee contained in their 23 July 2011 report (which stated that “importers provide a mandatory and explicit declaration of legality of product at the border and that such a requirement be incorporated into the bill”). AHEC understands the Australian government has addressed this recommendation through implementing a requirement for timber product importers to affirm that they have completed due diligence processes in line with the requirements of the Bill and to confirm this at the border. AHEC supports this approach in which there is no obligation on the importer to explicitly declare “legal origin” at the border since this aligns with the risk-based approach inherent to the due diligence system. It is also a realistic response to the challenges of providing watertight guarantees of legality when dealing with complex trading chains.



■AHEC welcomes the application of equivalent due diligence requirements to domestic processors of raw logs. This appears an appropriate response to WTO requirements for equal treatment of imported and locally produced goods. It aligns to the Lacey Act (which applies both to trade between U.S. States and to U.S. international trade) and may be a more efficient mechanism for domestic producers than that applied by the EUTR (which requires that the due diligence requirements be applied to “first placers” such as forestry operators).

### **AHEC’s support for a risk based approach**

AHEC believes that the objective of the due diligence system as stated in the Bill - to “reduce the risk that illegally logged timber is imported or processed” (Section 3, 6 Guide to this Act) – is entirely appropriate. It avoids imposition of an unrealistic and unnecessary requirement on importers to identify the forest of origin of timber purchased from regions where there may be a negligible risk of illegal logging. This is particularly important in the context of US hardwoods for which there are formidable technical obstacles to tracking of products from forest to point of export.

American hardwood products derive from a forest resource owned by 4 million private families and individuals, with holdings averaging less than 10 acres. An Australian importer of a particular grade of US hardwood lumber will source from a US stockist that has built up graded lumber lines by combining and mixing lumber from a wide range of sawmills over a long period of time (perhaps a year or more). Each individual sawmill in their turn will have accumulated graded log lines over a long period from several hundred, perhaps even thousands, of different forest owners. So the wood contained in a single parcel of graded US lumber imported into Australia will have derived from a small, but unidentifiable, subset of a much larger group of forest owners with numbers in the tens of thousands. The following year, wood will have been sourced from an equally large, but different, set of forest owners.

In the face of these obstacles, and in order to facilitate industry conformance to the Lacey Act and similar requirements in U.S. export markets, AHEC is developing an innovative risk-based approach to provision of customer assurance of a negligible risk of illegality. In 2008 AHEC commissioned an independent and peer reviewed “Assessment of Lawful Harvesting and Sustainability of U.S. Hardwood Exports”. The report was prepared by independent consultants Seneca Creek Associates with a team comprised of well-regarded experts in U.S. forest policy and forest certification. The report concludes:

■Based on published data, as available, and information compiled from state officials and the wood products trade, there can be high confidence regarding adherence to national and state laws in the U.S. hardwood sector.

■The weight of evidence strongly indicates that there is very low risk that U.S. hardwood exports contain wood from illegal sources.

■In assessing the breadth and effectiveness of various regulatory and non-regulatory programs that bear on the issues of legality and sustainability, all states in the U.S. hardwood-producing region can be considered low risk for illegal and non-sustainable hardwood sourcing.

■There can be high confidence that rights of timber ownership are well-established and respected. Numerous legal processes are available to landowners to resolve disputes involving proper title and/or the unauthorized taking or sale of timber property.

■While timber theft occurs and is of concern to private landowners, it is not believed to be a pervasive or systemic problem, especially with regards to U.S. hardwood exports. Stolen timber represents a very small portion of total U.S. hardwood production – very likely less than 1%.

In short, the Seneca Creek study allows an exporter of hardwood products sourced from anywhere within the United States to state, with confidence, that there is a negligible risk of any illegal wood entering the supply chain. This assurance can be provided without recourse to wood tracking procedures that would be prohibitively expensive within the U.S. context.

AHEC is committed to regular review and update of the Seneca Creek study to take account of potential changes in patterns of U.S. hardwood trade and the regulatory environment. The next review is due to be undertaken either in the second half of 2012 or first half of 2013.

AHEC would welcome an early opportunity to discuss procedures and protocols for review of the study with the Australian government to ensure it satisfies their on-going requirements to minimise the risk of illegally-sourced wood entering supply chains.

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