

SUBMISSION TO THE SENATE INQUIRY ON THE

ILLEGAL LOGGING PROHIBITION BILL 2011

(EXPOSURE DRAFT (18/03/2011))

WADIC



A joint submission from the following business Associations:

Window and Door Industry Council www.wadic.org.au

Decorative Wood Veneers Association www.woodveneer.asn.au

Timber Merchants Association www.timber.asn.au

Timber and Building Materials Association (Aust) www.tabma.com.au

Timber and Building Materials Association (Qld)

Cabinet Makers Association (Vic) www.cmavic.com.au

Cabinet Makers Association (WA) www.cmawa.com.au

Qld Timber Importers, Exporters and Wholesalers Association

*Representing approximately **110 Australian timber importers** and around **1,640 businesses in total**, from the timber merchant, secondary wood-processing/manufacturing and primary timber processing sectors.*

Submitted - 5/5/11

“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”

Australian Government's Department of Finance and Deregulation
“Best Practice Regulation Handbook” – Foreword -
<http://www.finance.gov.au/obpr/proposal/handbook/foreword.html>

“It (the European Economic and Social Committee) also underlined (with regards to illegal logging regulations): the need for taking into account the limited resources of SMEs (small and medium-sized enterprises)”

From a speech by STAFFAN NILSSON,
President of the European Economic and Social Committee (EESC)
at Joint Policy Workshop –
Implications of recent trade legislation within the UNECE region
for the global forest-based sector at the EESC -
"Does banning illegal logging rule out wood?" - 13.04.2011
<http://www.eesc.europa.eu/resources/docs/nilsson130411en.doc>

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1. Executive Summary

This Submission is presented by nine industry Associations representing approximately 110 timber importer businesses and around 1,640 timber merchants, secondary-wood processors and several log processors. Member businesses would directly employ about 16,000 people. We support the objective of restricting illegally logged timber. However, it is important that regulations are *effective* at reaching their objective, and in the most *cost-efficient* way possible. With this in mind, our recommendations are that:

- The Bill needs to have its Object Clause inserted, that is, *“to restrict illegally logged timber”*.
- The Definition for *“Illegally logged”* requires clarification. To maximise certainty and resolve potential conflicts between laws from different jurisdictions, this definition needs to be amended to: *“in relation to timber, means harvested in contravention to the national forestry laws in force in, and as set by the recognized Government in, the country (whether or not in Australia) where the timber was harvested.”*
- The Government should ensure maximum business cost-efficiency and competitiveness by designing the “Legal Logging Requirements” to be the simplest, most practical and at the least cost to business required to meet the regulatory Object, taking into account that:
 - This will lead to best compliance outcomes, because overly complex or expensive regulatory requirements will divert precious business human and financial resources away from the essential functional tasks of legality risk assessment and mitigation.
 - Any regulatory compliance costs in the form of higher raw material prices will flow through the entire wood manufacturing and building sector.
 - Small business, which comprises the majority of businesses in the potentially impacted sector, has a very limited capacity to handle increased compliance costs and burdens, and raw material price rises due to compliance cost flow-on.
 - We live in a world of international trade. If a product gets too expensive, consumers will change to cheaper non-regulated products or will buy what they wish from overseas on the internet.
- Business diversity and commercial flexibility are essential for competitiveness. To prevent businesses being “locked-in” to only one kind of business, forced to deal in one product type or being restricted to either just importing or local log processing, we recommend that one broad industry category be established, that is, *“Businesses or individuals that import timber and products containing timber, wood or wood-fibre and/or that that process local logs into timber, veneer, plywood, chips, paper or other products.”*
- It is estimated that 50% of timber that enters Australia comes in as *finished products* such as flat-packed fit-outs and kitchens, and composite products such as windows and furniture. If such products are *not* regulated, illegal timber will likely just be re-routed into the country via such finished products. This would negate much of the effectiveness of The Bill and will result in Government supported preferential treatment for overseas wood-products manufacturing over local manufacturers and jobs. For reasons of fair competition and regulatory-effectiveness, we call on the Government to regulate all *imported finished products* containing wood. A suggested approach would be to regulate, in The Bill itself, all products containing more than 5% wood.
- Noting that The Prohibition section of this Bill comes under criminal law (*Crimes Act 1914, Criminal Code*), we call on the Government to uphold the principle of consistent application of the law, and equal treatment under the law, by ensuring that the Illegal Logging Bill treats all importers in the same way, regardless of whether they bring in raw timber, processed timber/wood-products or finished product containing timber/wood.
- We question the need for *compulsory* Timber Industry Certifiers. Given the Prohibition requirement of The Bill, that industry will be carrying out “Legal Logging Requirements” and will have independent audits with associated reporting to Government, it seems unnecessary to require Certifiers, who will add significant business cost for little gain in regulatory effectiveness. Other approval mechanisms should be available to industry. Additionally, and most importantly, the Government needs to insert into The Bill, appropriate Certifier governance and accountability mechanisms, commensurate with the considerable powers that the Bill creates for this role.
- There should be periodic reviews to assess whether the law has been effective and cost-efficient at meeting its objective, and that it is not resulting in serious unintended economic, social and environmental consequences.

2. Introduction

This Submission to the Senate Inquiry into the Illegal Logging Prohibition Bill 2011 (Exposure Draft 18/3/2011) is from a group of nine timber importing, merchandising and wood-processing/value-adding Industry Associations. Total membership of these Associations is 1,640 businesses, largely drawn from the small, medium and family business sector. With 110 timber importer members, our group of Associations represents a significant percentage of the timber importer sector. Associations in our group are the:

- Window and Door Industry Council
- Decorative Wood Veneers Association
- Timber Merchants Association
- Timber and Building Materials Association (Aust)
- Timber and Building Materials Association (Qld)
- Cabinet Makers Association (Vic)
- Cabinet Makers Association (WA)
- Qld Timber Importers, Exporters and Wholesalers Association

The total direct employment provided by member businesses is approximately 16,000 people (based on the reasonable estimate of an average of around 10 employees per firm). The total secondary wood-processing and timber-merchant sector, including joiners, cabinet-makers, furniture and kitchen manufacturers, shop-fitters, veneering companies and distributors employs about 80,000 people, with forestry and primary-processing employing around another 60,000 (Table 1). Our members are highly trade exposed to price competition from imported *finished products* made of or including timber, wood and/or wood-fibre.

Most member businesses are located in the outer suburbs of cities and in regional towns, and the sector provides a significant percentage of Australian apprenticeship/trainee opportunities and work for skilled trades-people. The Small Business Impact Statement (p.3) states that 92% of businesses in the impacted sector are small and medium enterprises², many of whom are owner-operated or family-businesses.

Best Practice Regulation

We fully support the Government's objective of restricting illegally logged timber. However, legislation/regulation should be *effective* at reaching its objective and achieve this in the most *cost-efficient* way because this ensures least cost to consumers, tax-payers and Government, and least impact on jobs and business competitiveness. Importantly, cost-efficiency ensures that limited business resources (such as labour and finance) are most available to be focused on reaching the regulatory objective, and not diverted to ineffective activities such as unnecessary paper-work and duplicate regulatory activities.

"Good" regulation needs to have a stated objective (or "Object") and should include all necessary definitions. Regulation needs to be designed around principles of good governance, should be as "user-friendly" and simple as possible, should apply as fairly and as consistently as possible and should minimise the risk of unintended perverse outcomes.

Effective consultation between Government and the regulated parties is crucial, as is the need for Government to take into account the limited resources of small and medium businesses¹⁴. Legislation should be clear and easily understood, and should minimise additional unnecessary bureaucratic burdens, especially on rural populations¹¹ and small businesses.

This submission assesses the Illegal Logging Draft Bill according to the principles outlined above, drawing strongly on the Government's "Best Practice Regulation Handbook" for guidance³.

3. Object of The Bill

The Bill lacks an Object clause, obscuring its intent, and making future assessment of regulatory effectiveness impossible. The lack of a clear Object will lead to inefficient regulatory outcomes, because business will likely mis-spend resources trying to guess and reach “hidden” or ambiguous objectives. It is our understanding that the Object of The Bill is to “restrict illegally logged timber”, this needs to be inserted as the Object Clause. Note that this Object is supported by the Minister’s press release (Figure 2), the Department’s web-site⁴, the name of The Bill (“Illegal Logging Prohibition Bill”) and by the stated objective through-out the consultation process (such as during the Code of Conduct Workshops).

4. Definition - “Illegally logged” (Refer to The Bill - Part 1 Preliminary Section 5)

To maximise certainty for regulated businesses and minimise conflict between laws from different jurisdictions that may exist in one place, this definition should be amended to read: *“in relation to timber, means harvested in contravention to the national forestry laws in force in, and as set by the recognized Government in, the country (whether or not in Australia) where the timber was harvested.”*

This definition is in accordance with our understanding of the meaning of “Illegally logged” from the early stages of the “Legal Logging” process. For instance the Draft Generic Code of Conduct⁵ defines “Illegal Logging” as “when wood is harvested, transported, processed, bought or sold in violation of *national* laws, and “Legal Harvest” as when “wood is *cut and removed* in compliance with relevant *national and/or sub-national laws* of the *Country of Harvest*”.

If “*non-forestry*” laws such as OHS, transport, manufacture/processing, pollution and tax laws are to apply, then there is no justification to apply these laws to just imported timber, but also to all products including food, electronics and clothing. Illegal activities and corruption are not uncommon in many over-seas mining operations and the global oil industry¹³. Breaches of such laws can do a similar degree of harm to life, the environment and a nation’s prosperity, no matter whether the operation is forestry, mining, manufacturing, agriculture or food production.

We believe that the definition should say “*national* forestry laws, and should applying in the “*country*” (not “*place*”), and should be laws as set by the “*recognized Government*” because this gives precedence to National law in cases where there are conflicts between National, local, tribal/customary and Treaty International Law, or in countries where there is a dispute as to who holds Government. Without an “over-riding” law able to be applied in the case of such conflicts, it would be unreasonable to expect business to know what laws they or their supplier has to comply with.

5. Cost-efficiency

The Government should ensure maximum business cost efficiency and competitiveness by designing the regulatory compliance requirements to be the simplest, most practical and at the most efficient business-cost required to meet the regulatory Object. In making these decisions, the Government needs to take the following into account:

(1) That the current proposed compliance procedures (“Legal Logging Requirements”) listed in the Bill (Part 3, Section 14) and associated documents (the Explanatory Memorandum Consultation Draft⁶ and the Draft Generic Code of Conduct) appear to be unnecessarily numerous and complex, including the need for:

- Code of Conduct development by a Code Development body (with associated costs, fees)
- Certifiers, with associated fees
- Legality Audits – with associated Fees
- The development, operation and documentation of Complaints Resolution Processes
- Increased record keeping and retention
- The preparation of Legality Reports
- Development and/or compliance with Communication Protocols

- Development and administration of Sanctions for Breaches of the Code of Conduct
- Risk assessment activities – These will likely be very expensive, consuming considerable business time and human resources. For example, some companies buy multiple species from many suppliers. In some importer sectors, it is not unusual to buy veneer originating from fifteen countries, each country with four suppliers, and with each supply chain being four to six businesses in length.
- Risk mitigation activities - Including time and human resources expended to find and assess new lower risk sources of timber, in countries with different language and laws to Australia. This may necessitate the need to employ interpreters and lawyers expert in foreign forestry laws, plus the costs of foreign travel and accommodation.

(2) The perverse effects of high compliance costs - The purpose of the Bill is to reduce illegal logging, not to add business costs and compliance burdens. Best regulatory outcomes and compliance are generally *not* achieved by expensive and complex regulation. Rather, the opposite is more likely, because unnecessarily complex or expensive compliance requirements will divert precious business human and financial resources from important risk assessment and mitigation tasks, to administration, reporting and fee payment.

(3) Small business capacity – 92% of the sector potentially affected by illegal logging initiatives are small businesses (according to the Small Business Impact Statement²). Such businesses often lack adequate human resources, available skills and financial capacity to meet complex and expensive compliance requirements. With less buying power than large corporations, small and medium businesses are also likely to be worse affected by compliance-cost flow-on price rises in raw material (timber, wood-panels, veneer).

This Group of industry Associations strongly supports the conclusions of the Small Business Impact Statement regarding the need for low cost verification (p.23) - *“Design factors that provide clarity around compliance expectations, and simplify response requirements such as through template reporting and low cost verification are important to minimising impacts on small business.”*

Overly complex and expensive compliance requirements often present themselves to SME's as competition issues, unfairly advantaging larger and better resourced companies over smaller less well resourced ones. Additionally, compared to large Industry Associations, small business associations often lack the finances and available staff to enable them to participate in and contribute to consultation.

(4) Business Diversity and need for Commercial Flexibility to maintain competitiveness – A business does not always import the same products nor from the same suppliers, or may decide they need to process logs in addition to importing, or have log processing done on contract. They may rapidly change between these situations depending on factors such as timber and log availability, price, processing costs, technology, exchange rates and market conditions.

This is no different to normal business practices in any other manufacturing or import sector. Legal Logging Requirements should not unduly restrict business flexibility, nor restrict the legal timber products that a regulated business can buy, sell or process (either from Australia or overseas), nor act as an anti-competitive force, restraint of trade or barrier to entry.

To prevent businesses being “locked-in” to one kind of timber business, forced to deal in one product type or being restricted either importing or processing (of Australian logs), we recommend that one broad business category be established for all regulated businesses and individuals – *“Businesses or individuals that import timber and products containing timber or wood-fibre and/or that that process Australian logs into timber, veneer, plywood, chips, paper or other products.”*

(5) Compliance cost flow-on – The Legal Logging Requirements will place regulatory compliance costs on all local and imported timber. These costs will flow through the entire timber, wood-processing, -manufacturing and building sectors, making timber, wood-panels and veneer less competitive with non-regulated materials such as metals, polymers (plastics) and ceramics (tiles, glass, stone, concrete).

(6) We live in a world of competitive international free trade. If a product gets too expensive due to regulatory and flow-on costs, consumers will change to cheaper non-regulated imported products.

(7) The competition impacts of overly high compliance costs and cost flow-on effects will move jobs from the Australian forestry, timber, wood-processing and manufacturing sector, which directly employs around 140,000 people (Table 1), to timber-product manufacturing in countries without illegal logging laws and associated compliance costs. If the government doesn't ensure that all imported finished products are regulated, these will enter Australia free of any legality controls (and associated costs). It is worth noting that the broad forestry/timber and wood processing/manufacturing sector accounts for around 14% of Australian manufacturing. (Based on 2007 data - manufacturing in Australia employed approximately 1,014,080 people⁷)

(8) Specifically, the impact on jobs, business viability, financial security and on broader human and socio-economic well-being in regional areas and on small, medium and family owned and operated businesses needs to be considered by the Government.

(9) Lack of proper regulatory impact assessment – The Government reports have not properly considered regulatory cost impacts to Australian business. Despite the ABARE Report⁸, the Final Regulatory Impact Statement⁹ and the Explanatory Memorandum Consultation Draft reports to the contrary - business costs and impacts resulting from the complex and numerous “Legal Logging Requirements” could be very significant (see also ttachments 2, 3, 4). **It is worth noting that the Small Business Impact Statement² (p.19) was unable to estimate likely compliance costs on this sector.**

(10) Capacity building - The Australian Government has given \$15.7 million to other countries to assist them to improve their legal logging practices¹⁰. Given the likely high compliance costs for businesses, we call on the Government to spend at least the same amount on local importers, log-processors and their Associations, as they (the Government) have spent in overseas Capacity Building. In particular, funding should be used to assist small businesses and their associations to properly participate in consultation processes (such as contributing to the development of the Regulations for the Legal Logging Requirements), to help cover business compliance costs and fees, and to provide businesses with the resources and information to enable them to properly carry out risk assessment and mitigation.

(11) The cost of meeting multiple complex compliance will drive product substitution by competing materials – Quoting from the findings from a recent EU Workshop on Illegal Logging, “As more countries develop such legislation, internationally active companies need to meet multiple requirements. This increases business complexity and costs particularly in relation to competing materials.”¹²

(12) Some Suggestions from business stakeholders

- a. *The Australian Government needs to let Australian businesses know which is the right Government Department, or who is the right Official to contact, in every country of harvest, to obtain information about forest laws, assessments of compliance to these laws, the availability of legality certificates and other legality data and practices in each country. The Government needs to do this as soon as possible, so that businesses can develop and commence risk assessment and mitigation now.*
- b. *The role of Certifier need not exist, but instead that regulated businesses be required to register with the Government. That all timber and products containing timber/wood-fibre meet “point of entry” legality requirements (administered by Customs/AQIS). That a credible Legality Certificate from the Government in the Country of Harvest be one form of acceptable proof of this legality (for instance VLO - Verified Legal Origin - Certification).*
- c. *That the role of Certifier need not exist, but instead that regulated businesses be required to register with the Government, and send yearly Legality Audit reports direct to the Government. We believe this Option would be just as effective at enabling businesses to detect the risk of illegally logged timber in its supply chain, as having to put all reports and information through a Certifier.*

- d. *The availability of a “standard” Code of Conduct – Most small and medium do not have the available time and skills, or human or financial resources to participate in Code Development processes and bodies. Additionally, there are many businesses which are not members of any Association. We suggest that the Government provide one simple standard short Code of Conduct suitable for all regulated businesses, of a maximum length of three pages. We note that a Draft Generic Code of Conduct exists, but at 25 pages this needs to be reduced to become a simpler and more user-friendly document.*
- e. *Auditors – in the interests of competition this role should be put out to open tender.*
- f. *In the Regulations, that the Government work closely with importer businesses to develop and provide them with a standard template type system for easy compliance for small and medium enterprises.*

6. Regulatory Effectiveness, Fair Competition

To ensure regulatory effectiveness and efficiency we call on the Government to regulate all imported products containing timber, wood and wood-fibre. A suggested acceptable approach would be to regulate in The Bill itself, all imported products with more than 5% wood (by weight). Additionally, all wood-product *importers* should be regulated, regardless of whether they are companies, partnerships, sole-traders or individuals, and regardless of *shipment size*. All products, including finished products, should to be *simultaneously* regulated, to prevent any period of competitive advantage of one product over another, or any public perception that timber in finished products is outside Government concern.

It is highly likely that at least 50% of timber that enters Australia comes in as *finished and semi-finished products*¹ such as flat-packed fit-outs and kitchens, outdoor furniture, wooden garden ornaments, firewood, wooden components, timber blinds, wood-plastic composites, coffins, upholstered furniture with wooden frames, pre-fabricated staircases, laminated floors, pre-fabricated house frames, kit-homes and complex composite products such as windows made of metal/glass/plastic/timber (refer to Figure 1).

“Legal Logging Requirements” and associated fees will add significant cost to imported and locally produced timber, with flow-on regulatory cost increases spreading across the entire wood manufacturing industry and hence Australian-made finished products. Any reduction in the price competitiveness of timber and Australian made finished products will drive substitution by unregulated imported finished timber products, and illegal timber can just be re-routed into such imports. This will negate much of the effectiveness of The Bill and will result in Government-supported preferential competitive treatment for overseas wood-products manufacturing against local manufacturers and jobs.

We draw the Senate Committee’s attention to the Minister’s 2010 Pre-election press release (Figure 2) - (the illegal logging legislation will) “*put an end to unfair competition on the Australian forestry and timber products sectors by restricting the import of illegal timber products, including sawn timber, wood panels, composite products, wooden furniture, and pulp and paper products.*” We believe that the Government should honour the “fair competition” spirit of this press release, by regulating *all* imported finished products containing timber.

7. Equal and Fair treatment under the law

The Prohibition section of The Bill comes under criminal law (section 6 of the *Crimes Act 1914*; (b) Chapter 7 of the *Criminal Code*). It is not right to impose criminal law on some businesses or groups in society, whilst exempting others for an identical deed or act. We call on the Government to uphold the principle of consistent application of the law, and equal treatment under the law, by ensuring that the Illegal Logging Prohibition Bill treats all importers in the same way regardless of whether they bring in raw timber/wood, processed timber/wood-products or finished product containing timber/wood.

We accept that at times it may be harder to detect illegal timber in finished products, compared to detecting it in raw or semi-processed timber. However, imports of all other regulated products that come under criminal law, such as illegal drugs, are treated the same regardless of the form in which they are imported.

8. Timber Industry Certifiers (The Bill - Part 3)

The Associations which are signatories to this submission question the need for *compulsory* Timber Industry Certifiers. Given the Prohibition requirement of The Bill, and that industry will be carrying out many “Legal Logging Requirements”, plus will be having independent audits done with associated reporting to Government, it seems unnecessary to additionally require Certifiers, who will likely add significant business cost for little gain in regulatory effectiveness. Other approval mechanisms should be available to companies besides the use of Timber Industry Certifiers.

Most importantly, the Government needs to insert into The Bill, appropriate Certifier governance and accountability mechanisms, commensurate with the considerable powers that the Bill creates for this role.

(1) Timber Industry Certifiers have significant powers:

- They can close down a business by refusing or delaying certification.
- They are in a position to control which businesses are allowed to import timber or process logs.
- They appear to be the sole intermediary between business and Government with regards to whether a business has met its compliance requirements.
- They are to be involved in the writing of Regulatory Compliance documents such as Industry Codes of Conduct and other documents such as Complaints Resolution Processes.
- They are authorized to take “remedial action” (but against whom?)

(2) Governance

The Bill does not address the corresponding need to establish proper governance or accountability mechanisms to ensure that the powers of the Certifier are properly exercised, nor does The Bill address matters relating to the liability of the Certifier or rights of appeal or regulated businesses. These matters, concerns and questions are detailed below.

- To what standard will Certifiers be accredited, if any?
- What rights of appeal do importers and log-processors have against Certifiers, to challenge their decisions?
- What rights of compensation do importers and log-processors have against Certifiers, in cases where the Certifier is proven to have made an incorrect decision regarding not granting an importer a License (which will have serious adverse business impacts).
- What rights of compensation do importers have against Certifiers, in cases where the Certifier gives incorrect information to the Government, resulting in a search warrant being issued with possible business “lock down” for days and even months, or court proceedings to determine guilt or innocence with regards to the Prohibition section of the Bill?
- Will Certifiers be required to obtain full insurance against any such litigation?
- Will the Government indemnify Certifiers for such liability?
- Will Certifiers be involved in reporting matters to the Government relating to the Prohibition section of the Bill? Does their opinion count more than others, in the case of a matter proceeding to court?
- Who decides what their fees will be?
- If businesses have to pay the Certifier, will there be a competitive tender process to enable business to choose a Certifier with the most competitive fees, or will this be a “monopoly”, where a business has no choice but to go to an assigned, Government approved Certifier?
- Will Certifiers have to be independent (ie have no conflicting business- or other special-interests?) If so, how will this independence be defined, determined and ensured?
- What business information do Certifiers have legal access to? How will confidentiality be guaranteed?

9. Review

There should be periodic reviews to assess whether the law has been effective in meeting its Object and that it not resulting in serious unintended consequences, such as

- Unduly increasing business costs
- Creating unsustainable burdens for small business
- Acting as a barrier to the importation of *legal* timber, or significantly restricting the importation of legal timber
- Resulting in Illegal Timber being diverted into any non-regulated imported finished products
- If compliance costs and burdens result in timber being substituted by higher embodied-carbon materials such as metals, plastics and ceramics, this would be a most undesirable environmental outcome.

10. Addendum

We wish to draw the Senate Committee's and Government's attention to the analyses, recommendations and findings that have come out of the recent *Joint Policy Workshop - Implications of recent trade legislation within the UNECE region for the global forest-based sector*, held in Brussels, Belgium on the 13 April 2011. See speeches and presentations from this workshop at the web-site for the European Economic and Social Committee – <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-banning-illegal-logging-presentations>

Two particularly relevant papers are included in this submission as Attachments (Attachment 5. and Attachment 6.)

Endnotes

1. Australian Bureau of Agricultural and Resource Economics, *Australian Commodity Statistics, 2008*, "Table 135 - Value of Australian forest products trade" shows that Timber imports were \$492m, Panel/veneer imports \$274m, and Joinery and miscellaneous imports made of timber were \$583m http://www.abare.gov.au/publications_html/acs/acs_08/acs_08.pdf However, these miscellaneous "timber imports" would not include flat-packed fit-outs, kitchens, furniture, etc. Imports of furniture and furnishings in 2007-2008 was \$2,379m, approximately *three times* the value of imported timber and panels (from Australian Bureau of Statistics, 5439.0 *International Merchandise Imports – Australia*, "TABLE 1. Merchandise Imports, Section and Division of SITC Rev 3, (1 and 2 digit), Australia, Customs Value (\$ million)" Food and live animals; Furniture, Furnishing and Bedding column [http://www.ausstats.abs.gov.au/ausstats/ABS@Archive.nsf/0/5EC06061783D35E5CA25746B001928C7/\\$File/543901.xls#A1828708C](http://www.ausstats.abs.gov.au/ausstats/ABS@Archive.nsf/0/5EC06061783D35E5CA25746B001928C7/$File/543901.xls#A1828708C).) From this data, it would not be unreasonable to draw the conclusion that the *monetary* value of imported finished products containing timber/wood would twice to three times that of timber/panels. The amount of "equivalent original timber" could well be the same in imported finished products.
2. Cailum Pty Ltd, *Illegal Logging Policy – Small Business Impact Statement* (Report prepared for the Department of Agriculture, Fisheries and Forestry, March 2010) http://www.daff.gov.au/_data/assets/pdf_file/0010/1872631/Cailum_-_Small_Business_Impact_Statement.pdf
3. Department of Finance and Deregulation, *Best Practice Regulation Handbook* (Australian Government, June 2010) <http://www.finance.gov.au/obpr/proposal/handbook/docs/Best-Practice-Regulation-Handbook.pdf>
4. Department of Agriculture, Fisheries and Forestry Website, *Illegal Logging* <http://www.daff.gov.au/forestry/international/illegal-logging>
5. Timber Development Association, *Draft generic Code of Conduct for the Purchase and Supply of Legally Logged Timber and Wood-based Forest Products* (Prepared for the Department of Agriculture, Fisheries and Forestry, December 2009) http://www.daff.gov.au/_data/assets/pdf_file/0008/1875104/TDA_-_Draft_generic_code_of_conduct.pdf
6. The Parliament of the Commonwealth of Australia, Senate – *Illegal Logging Prohibition Bill 2011, Explanatory Memorandum – Consultation Draft*, 23 March 2011 (Circulated by

authority of the Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig)

http://www.aph.gov.au/Senate/committee/rat_ctte/logging_bill_2011/explanatory_memorandum.pdf

7. Australian Bureau of Statistics, 8221.0 - Manufacturing Industry, Australia, 2006-07, <http://www.abs.gov.au/ausstats/abs@.nsf/Products/A7F761E9639C99E7CA2574B00011F49C?opendocument>
8. ABARE report for the Department of Agriculture Fisheries and Forestry, *The economic consequences of restricting the import of illegally logged timber*, May 2010
http://www.daff.gov.au/_data/assets/pdf_file/0008/1873511/Logged_timber_May_2010.pdf
9. *Regulation Impact Statement - Australian Government policy on illegally logged timber*, Final 7 May 2010
http://www.daff.gov.au/_data/assets/pdf_file/0008/1872611/Final_regulation_impact_statement.pdf
10. Web-site, Australian Government, Department of Agriculture, Fisheries and Forestry, International Forestry, <http://www.daff.gov.au/forestry/international> (Second paragraph)
11. Presentation by Dr Lennart Ackzell, "Views from Family Forestry", *Joint Policy Workshop - Implications of recent trade legislation within the UNECE region for the global forest-based sector*, Brussels, Belgium, 13 April 2011
http://www.eesc.europa.eu/resources/docs/9_lennart_ackzell.pdf
12. Co-chairmen's preliminary conclusions and recommendations, *Joint Policy Workshop - Implications of recent trade legislation within the UNECE region for the global forest-based sector*, Brussels, Belgium, 13 April 2011
http://www.eesc.europa.eu/resources/docs/18_co_chairmens_preliminary_conclusions_and_recommendations.pdf
13. Presentation by Rupert Oliver, Director Forest Industries Intelligence Limited, "Why rule out illegal wood? Why & how has legislation developed in Europe and the USA?", *Joint Policy Workshop - Implications of recent trade legislation within the UNECE region for the global forest-based sector*, Brussels, Belgium, 13 April 2011
http://www.eesc.europa.eu/resources/docs/2_rupert_oliver--2.pdf
14. Speech by Staffan Nilsson, "Does banning illegal logging rule out wood", *Joint Policy Workshop - Implications of recent trade legislation within the UNECE region for the global forest-based sector at the EESC*, 13/4/11
<http://www.eesc.europa.eu/resources/docs/nilsson130411en.doc>

Table 1 - ESTIMATES OF EMPLOYMENT, INDUSTRY SIZE & TURNOVER IN THE TIMBER & WOOD-PROCESSING INDUSTRY

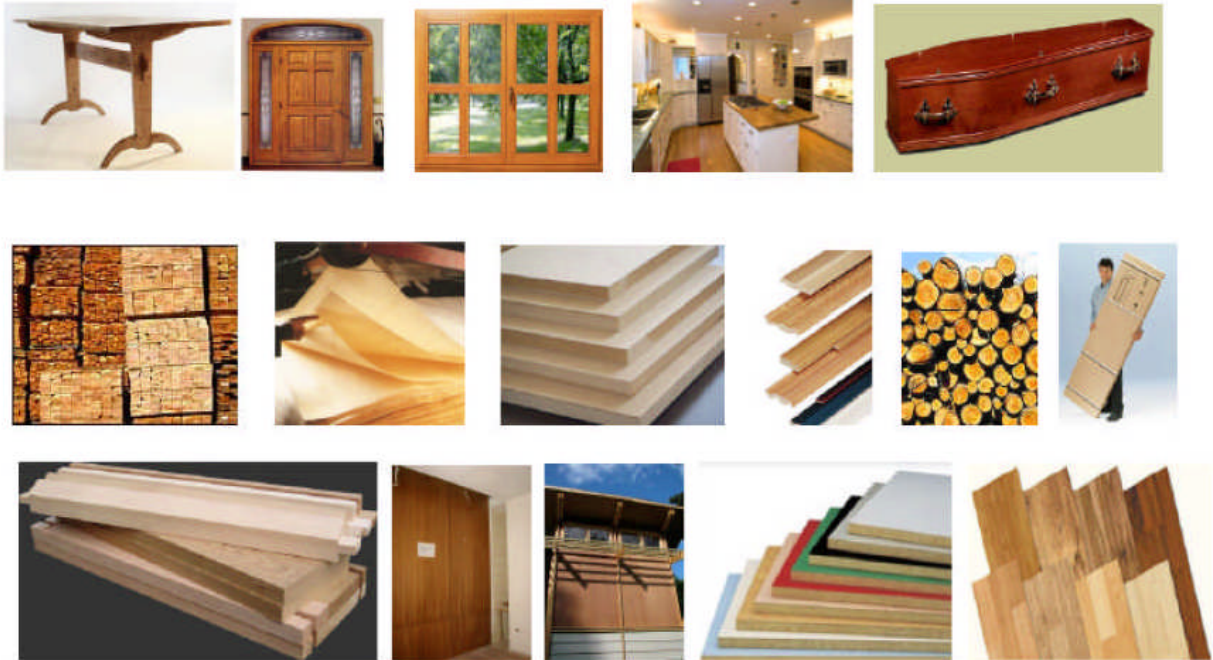
Sub-sector/Industry Association/Group	Approximate Employment	Annual Turnover	Web-sites/References
FORESTRY, PLANTATIONS, PRIMARY TIMBER PROCESSING AND PULP/PAPER <i>Employment excludes "merchandising" and "timber product manufacturing" (see below). "Merchandising" and "timber product manufacturing" turnover needs to be deducted from the \$21.4 billion</i>	~ 60,000 ⁸	~ \$21.4 billion ⁹	8. http://adl.brs.gov.au/forestsaustralia/facts/employment.html 9. http://www.daff.gov.au/forestry/national/industries
TIMBER MERCHANDISING AND SECONDARY WOOD-PROCESSING <i>Comprised of -</i>	Approx 10,000 firms ~ 80,000	Annual Turnover ~ \$14 billion +	
- Furniture Industry - FIAA	Wooden furniture manufacturing 6,939 ¹⁵	Wooden furniture manufacturing 30,000 ¹⁶	16. http://www.bis.com.au/verve/resources/woodenfurniture_2004_Brochure.pdf 4. http://www.australianfurniture.com.au/ausmadeindustry.aspx?pageID=1 15. http://www.docstoc.com/docs/22936348/Furniture-manufacturing-industry-in-Australia
- Kitchens/cabinet makers – HIA, CMA	Vic – 295 ¹⁰ WA – 222 ¹¹		3. http://economics.hia.com.au/publications/kb_industry.aspx
(employment is estimate only)	Other states - estimate 500		10. http://www.cmavic.com.au/webimages/member%20list%20PDFs/Sept09/Victoria%20Full%20Listing%20Sept09.pdf
	Total from above - approx ~ 1,000 firms	10,000 ¹	11. http://www.cmawa.com.au/cma_members_directory.php?searchvalue=&category=&ob=1
-Shopfitting - ASOFIA (employment is estimate only)	344 ⁵ firms	3,400 ¹	5. http://www.shopfittingassociation.com.au/mDirectory/Search_Product.aspx
-Merchandising - TABMA, TMA	~ 200 ^{6,7} firms	22,000 ²	2. http://adl.brs.gov.au/forestsaustralia/facts/employment.html 6. http://www.tabma.com.au/about-us.php 7. http://www.timber.asn.au/
-Windows and Doors - WADIC (employment is estimate only)	128 ¹² firms	1,300 ¹	12. http://www.wadic.org.au/member_al.html
-Veneering - DWVA (employment is estimate only)	21 ³ firms	321	13. http://www.woodvener.asn.au/
- Timber Importers - ATIF	20 ¹⁴ firms	Not available	14. http://www.atif.asn.au/index.php?option=com_sobi2&Itemid=28 About&sectorID=75">http://www.mskills.com.au/Info.aspx?TAG=MSA_Info_Sector.LMF>About&sectorID=75
-Not members of an Association	Not available	Not available	Not available

Where not known, employment estimates were derived by multiplying the number of member firms in each Association by approximately 10 people, which is a conservative guess of the average number of employees. This is a reasonable figure – see <http://www.thefreelibrary.com/The+furniture+industry+down+under:+Part+1--Australia's+challenges....-a098272869>

Note – This table dates from 2009 so data may be slightly out-of-date. However, industry structure would not be expected to have significantly altered since that time.

Figure 1 – Products made of wood

All these come from trees and forests:



so they should be covered by the same regulations.

Figure 2



Campaign Media Release

MINISTER FOR AGRICULTURE, FISHERIES AND FORESTRY

GOVERNMENT TAKES STRONG ACTION ON ILLEGAL TIMBER IMPORTS

A re-elected Gillard Labor Government will implement a package of reforms to restrict the sale of illegally logged wood in Australia.

Illegal logging is a global problem that needs to be eliminated as it has significant economic, social and environmental costs. These costs are estimated at around US\$60 billion per annum, and affect some of the poorest nations in the world.

A re-elected Gillard Labor Government will introduce tough new legislation making it an offence to import any timber products into Australia that have not been legally harvested.

In addition, Labor will implement a code of conduct to require suppliers who first place timber into the Australian market carry out the proper tests to ensure wood coming into the country is legal.

We will also require the use of a trade description and the circumstances under which it can be used, which will give consumers confidence that they are purchasing legally sourced wood.

A Gillard Government will continue to work through our bilateral agreements with Indonesia, China and Papua New Guinea to ensure a consistent global approach to eliminating illegal logging.

Federal Labor's initiative will complement the work of the United States under the Lacey Act and the European Union by demanding the legal origins of wood are verified.

These measures will put an end to unfair competition on the Australian forestry and timber products sectors by restricting the import of illegal timber products, including sawn timber, wood panels, composite products, wooden furniture, and pulp and paper products.

Our combination of initiatives and those of the EU and the US on illegal logging will raise the bar for forestry practices in a number of countries internationally so that in the future they will have the same high standards of sustainable forest management which are demonstrated in Australia.

This initiative is another example of the Gillard Labor Governments strong commitment to protection of our environment for our future generations.

There will be no impact on the budget from this important initiative.

DATE: 10 August 2010

COMMUNICATIONS UNIT: Phone: (02) 9384 2220 | Fax: (02) 9264 2213
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AUTHORISED N.MARTIN for the ALP, 5/9 Sydney Ave. Barton ACT.

ATTACHMENTS

Attachment 1.

“EXPLANATORY MEMORANDUM FOR THE ILLEGAL LOGGING BILL – FINAL – V2 EXPOSURE DRAFT” - Comment -

Conversion from a “Legality” requirement to a “Sustainability” requirement

It is noted that the Explanatory Memorandum mentions the likelihood of a future “conversion” of this Act from a “Legality” requirement to that of “sustainable management of forests”. However, the Explanatory Memorandum does not define what is meant by “sustainable management of forests”, which can have three meanings:

- (a) *“Sustained Yield” (of a renewable natural resource such as timber, fish and game)* – The harvest rate is always less than or equal to the re-growth or re-population rate.
- (b) *“Sustainable management (of a forest)”* – (a) above plus that natural values such as biodiversity, water and soil quality are maintained.
- (c) *“Sustainable management (of a forest), with independent certification (such as AFS/PEFC/FSC), and full supply line Chain of Custody certification to the end-user.*

Lack of Availability of suitable FSC/AFS/PEFC timber

If specifically 1(c) is meant, then with regards to the joinery, furniture & cabinet-making and veneering industries, **the availability of AFS/PEFC/FSC certified hardwoods in a suitable range of species, in the right quantity, in suitable grades, dimensions and type/form (eg veneer, timber) is extremely limited.**

Sustainability exists without AFS/PEFC/FSC certification

Note that in most countries in the developed world (Canada, USA, Western Europe, New Zealand and Japan) - biodiversity, water-quality, soil conservation, carbon-emission, habitat preservation and other environmental laws and policies ensure that forests are sustainably managed as per 1(b), yet large amounts of such forests are neither AFS, FSC or PEFC certified.

In the US for instance, the world’s largest hardwood exporter¹⁵, the hardwood forests are sustainably managed^{1,2,3,4}, yet largely because of certification cost to the small farmer growers/owners, less than 1% are PEFC/FSC certified⁵. The EU’s forests are sustainable⁶, yet only 3% of the small non-industrial forest owners (where most of the hardwood timber grows) are PEFC/FSC certified⁷, and in New Zealand only 54% of the plantations are certified⁸.

Compulsory FSC/PEFC/AFS certification - Trade Restrictions on imports

If AFS/PEFC/FSC Certified “Sustainability” as per (c) were to be made a requirement for all imported timber, given the percentage area of certified forest in these countries, approximately:

- 99% of sustainable hardwood imports from the US would be blocked
- 97% of sustainable hardwood from the EU would be blocked
- 46% of plantation pine/panel imports from New Zealand would be blocked

The imposition of such unjustifiable trade barriers would breach Australia’s WTO/GATT free trade obligations.

Chain of Custody

Even if a higher percentage of suitable forests and logs overseas were to become certified, this would not guarantee supply of certified timber, because many of the small, medium and specialist processors do not have (cannot afford), the necessary Chain of Custody certification, without which they cannot sell timber as AFS/PEFC/FSC certified. For example, in Europe, only 9,389 out of 190,000 (less than 5%) of primary-processors have PEFC/FSC Chain of Custody¹⁴.

“90% of the timber produced in Australia is certified”?

It is very likely that the Regulatory Impact Statement (RIS)⁹ is incorrect in stating that “...approximately 90% of *timber* produced in Australia is sourced from (AFS/FSC) certified forests.”. No references for this statement are given, and it is likely that this figure is erroneously drawn from the fact that 90% of Australia’s *plantation* and *State owned forest area* (10,272,586 ha) is certified¹⁰. However, this ignores the 11,341,000 ha of largely sustainable private native forest and farm wood-lots¹¹, much of which is harvested for timber, yet is largely *uncertified*.

Impacts on the Australian timber industry and jobs

This 90% figure for Australian certified timber is highly questionable, and could be far less than this, once the yield from the largely uncertified private native forests and farm wood-lots is taken into account. Any conversion of a “Legality” requirement to a “certified sustainability” requirement could be expected to have a significant impact on:

- Nearly all the small hardwood saw-millers/veneer-millers in NSW and Qld, and many in Tasmania, who be forced to close, as their only available resource is from uncertified but sustainable and regulated^{12,13} Private Native Forests/farm wood-lots.
- Associated regional employment, communities and business activity.
- The availability of NSW and Qld sustainable native hardwood species for joinery and furniture uses (because the majority of AFS certified timber is used for flooring).
- On the income of Australian farmers with wood-lots and on small private native forestry owners, neither of which generally have FSC/AFS certification.

Conclusions/Recommendations

We fully support the goals and brands of AFS, PEFC and FSC, with many member businesses having certification for at least one of these. However, lack of adequate availability, in the right species, grades, dimensions and product type, for imported- and a significant percentage of local-timber, means that broad AFS/PEFC/FSC certification is limited at this stage, in terms of satisfying Australian demand for timber and wood products.

Additionally, if national laws, Government policies, good governance and proper law enforcement ensure forest sustainability and the broad national protection of social amenity and democratic values, a *compulsory* requirement for FSC/AFS/PEFC certification should not be necessary and will only add unnecessary expense, and cause serious supply, competition and trade restrictions, for no environmental, social or economic gain.

Attachment 2.

“EXPLANATORY MEMORANDUM FOR THE ILLEGAL LOGGING BILL – FINAL – V2 EXPOSURE DRAFT” - Comment -

Business Impacts

The Explanatory memorandum draws incorrect conclusions in saying (p.3), *“No significant financial impact will arise from the introduction of this Bill. Compliance costs to industry are expected to be absorbed within current operational costs and offset by increased economic benefits resulting from the exclusion of illegally logged timber from the market.”*

This statement cannot be justified. The compliance costs that the regulations will place on all timber and wood (no matter whether from Australian forests or imported) will flow through the entire wood-processing, manufacturing and building industry. These costs will make Australian made timber products less competitive with those made from non-regulated materials such as metal, polymers and ceramics, and with imported finished products (unless the Government regulates *all* imported products containing timber and wood-fibre).

Attachment 3.

The ABARE Report - Comment

"The Economic Consequences of Restricting the Import of Illegally Logged Timber" - [http://www.daff.gov.au/data/assets/pdf_file/0008/1873511/Logged timber May 2010.pdf](http://www.daff.gov.au/data/assets/pdf_file/0008/1873511/Logged_timber_May_2010.pdf)

Although this report gives the impression that compliance costs will not be a serious issue for individual Australian businesses, **they do not provide any data to support this**. The compliance costs that the ABARE report gives are costs in *supplier* countries, which may be entirely unrelated to compliance costs for Australian importers.

The ABARE Report provides their compliance costs as per m3 of log, which is largely irrelevant to most importers. Information on the original log volume has long dissipated via the multiple processing and recovery stages as the log was transformed into sawn timber, machined mouldings, decorative veneer, fibre etc or a combination of these.

We wish to specifically comment on the statement from the ABARE Report *"A decrease in employment in the wood product sector implies that there will be an increase in employment in other sectors."* (p.25) There will **not** be corresponding job increases in other sectors if the regulatory price increases in imported and local timber result in competitive substitution by imported (unregulated) finished timber products. In such a case, there would be a **net loss** of jobs in Australian manufacturing.

Additionally, we do not believe that it is acceptable or necessary for compliance costs be so high as to cause business closure and job losses in the timber and secondary-wood processing sector, regardless of whether these are replaced by jobs in other sectors or not. It is completely economically and socially inappropriate and irresponsible for ABARE to treat the relevance of the tens of thousands of jobs and businesses in this sector, in such a dismissive way. Regional employment and jobs, small business viability, life-time savings invested in businesses, families' financial security and significant investment in skills and training are at stake.

Attachment 4.

The Regulatory Impact Statement - Comment

The Regulatory Impact Statement (p.17. RIS [http://www.daff.gov.au/data/assets/pdf_file/0008/1872611/Final regulation impact statement.pdf](http://www.daff.gov.au/data/assets/pdf_file/0008/1872611/Final_regulation_impact_statement.pdf)) draws similar incorrect conclusions as does the ABARE report *"The Australian industry will gain from (these) higher prices, which have the capacity to off-set part if not all of the increase in production due to the new legal verification compliance costs."* There can be **no** reason to assume that production in the timber and timber import industry will *increase* due to higher compliance costs, more likely the opposite will occur.

Also from the Regulatory Impact Statement, *"This (regulatory compliance costs) is (are) not expected to have a significant effect on industry structure, particularly small businesses, as the rebound in market prices for legal timber products that would occur if the sale of illegally sourced product was severely restricted in Australia, would be expected to cover at least part of the due diligence costs."* **We strongly dispute this conclusion**, as it assumes that timber will not be substituted by competing non-regulated products such as steel, plastic, ceramics and any imported un-regulated finished timber products.



**European Economic and Social Committee
The President**

SPEECH BY STAFFAN NILSSON, PRESIDENT OF THE EESC

at

*Joint Policy Workshop - Implications of recent trade legislation within the UNECE region for the global forest-based sector
at the EESC*

"Does banning illegal logging rule out wood?"

13.04.2011 09:00

"Ladies and gentlemen, fellow EESC members, as President of the host organisation for this joint workshop – the European Economic and Social Committee – it is my pleasure to warmly welcome you all here this morning and to wish you focused, useful and interesting presentations, discussions and conclusions. In doing so, I trust that the outcome from today's event will contribute to wider awareness of and debate on illegal logging globally and its associated trade in wood-based products, as well as offering some further insights from those involved in the sector to those responsible for drafting and implementing legislation to address this world-wide problem.

I have to say that the subject matter of this workshop – legislation against illegal logging - is not only very topical and timely, but is also a recognition of the work by the EESC, specifically on illegal logging, as well as on other forest-based sector issues. The Committee's recent opinion on what has since become known as the EU TR ('Timber Regulation') has been constructive but frank, seeking to offer the wealth of experience held by EESC members through the expertise of the Section for Agriculture, Rural Development and the Environment¹. No doubt Mr Burns, as both a Committee Member and an active forest harvesting entrepreneur, will tell us more on that later in the morning!

Although it was written a year before the final text of the EU Timber Regulation was known, the EESC Opinion was far-sighted and hopefully influential in already pointing out the need for traceability of wood-based products through their supply chains and to avoid duplication with existing management systems which already do this. It also underlined: the need for taking into account the limited

¹ NAT/420 – CESE 1462/2009.



European Economic and Social Committee
The President

resources of SMEs (small and medium-sized enterprises), the inclusion of energy wood in the product scope, as well as the importance of properly assessing risk. Although the uniform penalties recommended now depend on the good will and co-operation of EU Member States, the recommendations on an advisory group and a review process seem to have been heard.

The Committee has also been very active in producing a series of other opinions on key EU initiatives in the forest-based sector, amongst which that on forest degradation and deforestation² is closely related to today's discussions. Two Committee Opinions have been produced on issues relating to climate change³. Prior to all of these was the well-known 'Kallio Report'⁴, which was the first of its kind to look in depth into sectoral issues by commenting the Commission's communication on EU forest-based industries. In follow-up, a new report is now foreseen on the European woodworking and furniture sector⁵.

For those of you who are not yet familiar with these learned works, some are available at the display tables outside this meeting room. The opinions form a major part of the overall advisory task of the EESC vis-à-vis the other EU institutions and in so doing, providing a voice for civil society in the development of EU policies.

But we are not only looking at European policy and legislation today. With an important participation of speakers and delegates from North America, we shall also examine how the Lacey Act Amendment has developed and is being implemented there, as well as its impacts on EU and other market actors.

In this context, co-sponsorship for today's workshop from the American Hardwood Export Council, Canada Wood and the Malaysian Timber Council is highly appreciated. And we are very appreciative of those many speakers here today who have been

² NAT/424 – CESE 876/2009 of 14.4.2009.

³ NAT/412 – CESE 626/2009 of 25.3.2009 and NAT/474 – CESE 1179/2010 of 15.10.2010.

⁴ CCMI/058 – CESE 1925/2008 of 3.12.2008.

⁵ CCMI/088 – R/CESE 205/2011.



European Economic and Social Committee
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funded to attend by their own organisations. In particular, we note the very valuable contributions to be made in this manner from Dr. Elena Kulikova, joining us from Russia, and Gary Lougee and Andrea Johnston from the USA, who have all travelled especially to be with us. Their efforts are highly appreciated.

We have a varied European and international audience which, like the EESC itself, represents a good cross-section of civil society and economic activity. We are nine EESC Members or Delegates here today⁶. Amongst the workshop participants are: EU, Member States' and other governments' officials; academics; non-governmental organisations; industrial representatives; journalists and forest owners. Confessing a further, personal interest in today's event, I am proud to count myself also amongst the ranks of the latter as a farmer-forester from Sweden!

Ladies and gentlemen, we have a very intense but high-quality schedule today. The Committee offers you a buffet lunch in our very pleasant Atrium, as well as coffee breaks between the sessions. In bidding you welcome, I also urge you, as participants, to participate actively, raising questions and giving opinions; constructively and concisely. This will assist the Chairmen and Discussion Animator to record your views and ideas and so contribute to a useful workshop output. I wish you all an active, enjoyable and successful day!"

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Internet: <http://www.eesc.europa.eu/?i=portal.en.staffan-nilsson-speeches>

⁶

NAT: Richard Adams, Brendan Burns, Ludvik Jirovec, Krzysztof Ostrowski, Stanislaw Rozycki, Martin Siecker, CCMI: Josef Zboril, Patrizio Pesci (Delegate).

Attachment 6. (over) http://www.eesc.europa.eu/resources/docs/2_rupert_oliver--2.pdf

“Why rule out illegal wood?” Why & how has legislation developed in Europe and the USA?

Presentation by Rupert Oliver, Director Forest Industries Intelligence Limited

From: Joint Policy Workshop - Implications of recent trade legislation within the UNECE region for the global forest-based sector, Brussels, Belgium, 13 April 2011.

This paper represent the author’s personal views and has been reproduced with his approval.

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Why rule out illegal wood?" Why & how has legislation developed in Europe and the USA?

Presentation by Rupert Oliver, Director Forest Industries Intelligence Limited

Joint Policy Workshop, Brussels, 13 April 2011

Why has legislation been introduced in the EU and USA?

When introducing presentations on Lacey or the EU timber law its traditional to talk about a certain % of wood imports or global production being derived from illegal sources at a cost of so many billions of dollars.

I'm not going to repeat the numbers. Frankly, I don't have much confidence in their accuracy or think they have much relevance to the discussion in hand. The rhetoric has played an important role to move the agenda forward. But now these laws are in place it is time to put them in their true context. What is the real contribution that they can make? How can we make them work in practice?

Much of the political dialogue to date has given the impression that we understand the scale of the illegal logging problem - that we have a clear idea of where it is occurring and why. I'm not sure that we do. The numbers on levels of illegal logging are often poorly researched. In some instances they are still heavily dependent on how the term is defined. The level of illegal wood exported from Papua New Guinea, for example, has been variously estimated at 0% or 100%. Which number you accept seems to depend on different interpretations of the legal framework and different biases with respect to the legitimacy of industrial logging in tropical forests.

That's not to say that illegal logging is not a significant problem. There is plenty of evidence indicating it is widespread and very damaging in parts of the humid tropics, Eastern Europe and the CIS. However, it is also symptomatic of other deeper problems the importance of which varies from one place to another. These include:

- Weak land tenure – acting as a disincentive for long-term forest management and an incentive for timber mining for short-term profit;
- Pressure to convert forest land for more profitable uses, especially commercial agriculture;
- Lack of technical and administrative resources for forest law enforcement;
- Corruption in government and forest and other agencies;
- A democratic deficit leading to national governments imposing forest laws without proper consultation or consent, or with little understanding of the technical or economic realities of forestry practice, or without considering the needs of communities for energy, land, materials or livelihood.

What is often overlooked in this debate is that there are many areas of the world where the combination of secure land tenure, strong civil society, a wealthy and educated population, a free press and a free and **lightly regulated timber trade** have effectively delivered not only legal but also sustainable forestry practices.

What conclusions can we draw from this with respect to the Lacey Act Amendment and the EU Timber law?

First it's clear these laws must work in lockstep with national processes in producer countries to improve forest governance. They should act to maximise the leverage offered by western markets to encourage wider participation in these processes. Many countries are already engaged in concerted efforts to improve forest governance. The laws should help boost these efforts.

Second, these laws should not be seen as a mechanism to increase the level of state control over the global wood trade. Rather they should be a mechanism to create a level playing field. The laws should positively benefit those producers demonstrating minimal risk of illegal supply. These producers should be given increased market access without imposition of significant new additional costs.

Third, there is an essential need to improve quantitative data on the genuine risk of illegal wood entering European and North American supply chains. Only through collection of this data can we know where best to target resources. It's the only way we can avoid imposing new and unnecessary controls on wood from areas where the risks of illegal supply may, in fact, be very low.

We also need to view these new laws as an opportunity to develop an efficient risk-based model for environmental procurement. This model should, in time, be extended to other timber consuming countries and, indeed, to other material sectors with a larger environmental footprint.

Content of the EU Timber Law and Lacey

Now, you have to understand that as someone from Yorkshire in northern England, I'm inclined to criticise anything and everything that comes out of Brussels. But with the Timber Law, as much as it pains me to say it, the EU seems to have done a reasonable job to navigate this very difficult terrain. Certainly there is much work to be done to ensure effective and fair enforcement. But this is a truly innovative piece of legislation which might actually work.

I'll only briefly describe the content of the EU Timber Law and the Lacey Act. There are differences in detail, but the mechanisms behind both laws are essentially the same. The central component is a prohibition on trading products derived from illegally harvested timber within the EU or US. Note that in neither case does the prohibition place an obligation on operators to positively demonstrate legality as a pre-requisite to dealing in timber. The European and US authorities must prove that a timber product derives from an illegal source to prosecute under the prohibition articles of both laws. Both laws also effectively oblige timber importers to exercise due care to minimise the risk of illegal wood entering their supply chains.

Why these laws?

So why these laws – why focus on legality when the real prize is sustainability? And why introduce due diligence obligations for traders rather than simply demand government-endorsed legality certificates at point of delivery into the market?

The answer to these questions has much to do with national sovereignty and WTO compliance. Consumer country laws demanding production standards different from those enshrined in the laws

of producer countries are seen by producers, quite naturally, as a significant infringement of their national sovereignty.

Unless conformance to rules for “sustainable timber” can be demonstrated through internationally recognised standards and certification systems, all such measures run the risk of challenge under the WTO’s non-discrimination rules. Systems like FSC and PEFC have considerable merits. But neither can yet claim to be built on a national consensus forestry standard within all the member states of the WTO. There are still big gaps in their international networks. Less than 2% of forest in Asia, Latin America and Africa is currently FSC or PEFC certified. Even within North America and Europe, the vast majority of non-industrial private forest owners are not yet engaged in forest certification.

So it is politically more acceptable and more constructive for consuming countries to assist producer governments to enforce their own forest laws than to attempt to dictate sustainability standards.

And why not an international legality licensing system? This would require development of a global framework to regulate the entire wood production chain from extraction through to entry into the EU or US market. Such a response would be disproportionate. Consider that at most 5% of wood consumed in the EU is at risk of being derived from an illegal source. It would add unnecessary costs in supply of wood from regions where there is little risk of illegal logging. There would be significant potential for discrimination against smaller non-industrial owners given the difficulties of tracking wood where these owners predominate. Resources and capacity for such a system are lacking - with the result that it may well just lead to an explosion in the numbers of bogus legality licenses.

The practical option

So the EU and US governments have taken the only practical option. This is essentially to reinforce existing codes and procurement policies developed by the private sector to reduce the risk of illegal wood entering supply chains.

There are many examples of these initiatives. Some European timber trade associations have been developing these for the better part of two decades. I was recruited by the UK TTF in 1991 to help implement their first procurement policy for members. This subsequently evolved into a comprehensive due diligence tool requiring: risk assessment of all products and suppliers; setting of targets and action plans to eliminate high risk products and suppliers; and backed by annual reporting and independent audits of the whole system.

Similar due diligence systems have been evolved by Le Commerce du Bois in France and the Netherlands Timber Trade Association. In North America, for many years the SFI Program has required participating companies to be audited against a procurement standard, including a requirement to assess the risk of any wood coming from an illegal source and a program to address any significant risks identified.

Other systems have been operating at international level for many years. Systems managed by the WWF’s Global Forest and Trade Network and The Forest Trust have played a particularly important role in supporting the procurement efforts of retailing companies.

Just to be clear, I'm not talking here about chain of custody systems for labelling of specific product lines. I'm talking about company procurement policies and management systems that require scrutiny of 100% of wood purchases to assess the risk of any being derived from illegal sources.

Product certification systems like FSC and PEFC are an important tool for mitigating risk of illegality where identified for a specific wood product or source region. But they are not directly equivalent to the due diligence systems required by the EU timber law or implied by the Lacey Act. (The FSC's Controlled Wood Standard and the Due Diligence System defined in Appendix 2 of the PEFC Chain of Custody standard are a much closer parallel than either of their forest management certification systems).

What about options for producers

These new laws mean that companies shipping product into the EU and US will be under considerable pressure to demonstrate that there is very little risk of any wood coming from an illegal source.

Where shippers are confident of good forest governance, the simplest and cheapest option may be for them to commission independent research compiling quantitative evidence to confirm low risk. This is the approach adopted by the American Hardwood Export Council to help satisfy customer demands in Europe. Shippers could link such independent risk assessments with their own auditable due diligence systems. This would enable them to make legitimate claims that all their wood purchases derive from low risk sources.

An option for some shippers sourcing from areas where forest governance problems exist is to work through national forest law enforcement processes. For example, EU-sponsored FLEGT VPA processes are facilitating nationwide legality licensing systems in an expanding range of tropical timber supplying countries.

Where these systems are absent or slow to develop, shippers sourcing from higher risk regions will have to work through private sector third party legality verification and certification systems.

Perceptions of the wood industry

Finally I want to refer to communication issues. So far the media doesn't appear to have paid much attention to these new trade laws. But the few reports I've seen have been negative.

National newspapers in Indonesia and Vietnam have simply presented the laws as another example of western protectionism. Nothing positive was said about the potential role of demand side measures to support forest law enforcement efforts in producer countries.

Meanwhile reports in national media in Europe have focused heavily on the complaints of green party officials about alleged short-comings in the legislative text. Last month the London Times ran a report on the EU Timber Law in its "Greenwash" column. This begins with the usual numbers on illegal wood imports and tropical deforestation and goes on to suggest that:

"there are worrying signs that suppliers and retailers will find loopholes [in the new legislation], enabling them to carry on profiting from the destruction of natural tropical forests....the licensing

systems in many rainforest countries are weak and subject to corruption, so millions of tonnes of hardwood hacked from natural forests will be defined as legal and end up on our DIY store shelves”.

We need to make this work

It seems to me the best response to this kind of coverage is to make the legislation work and then to shout about it from the roof tops. In this legislation there lies a genuine opportunity for the wood industry to turn the media coverage around. An effective response could put to bed once and for all lingering doubts about the legality of wood products – doubts which undermine the reputation of the whole industry. After all, the wood industry will be the first major materials sector able to claim that 100% of raw material is demonstrably of low risk of being derived from an illegal source.

Perhaps then, the powers that be will be encouraged to switch their attention away from timber trade regulation and start to address the destructive effects of widespread illegal bauxite and iron ore mining and the rampant corruption that pervades large swathes of the global oil industry.

Rupert Oliver 11 April 2011

Endnotes to the Attachments

1. Alberto Goetzl - Seneca Creek Associates LLC, Paul Ellefson PhD - University of Minnesota, Philip Guillery - Tropical Forest Trust, Gary Dodge PhD - Consulting Biologist/Ecologist, Scott Berg - R.S. Berg Associates (Report prepared for American Hardwood Export Council), *Assessment of Lawful Harvesting & Sustainability of US Hardwood Exports*, October 1, 2008
http://www.americanhardwood.org/fileadmin/docs/Seneca_Creek_Study/Seneca_Creek_Study_Full_Version.pdf
2. US Department of Agriculture Forest Service, *2000 RPA Assessment of Forest and Rangelands* <http://www.fs.fed.us/pl/rpa/rpaasses.pdf>
3. From (US) Hardwood Plywood and Veneer Association website, "Are American Hardwoods Sustainably Managed?" <http://www.hpva.org/sites/default/files/Sustainability%20FAQ.pdf>
4. From American Hardwood Export Council website, "Sustainable Forestry"
<http://www.americanhardwood.org/sustainability/sustainable-forestry/>
5. From American Hardwood Export Council website, "Certification"
<http://www.americanhardwood.org/sustainability/responsible-sourcing/certification/>
6. European Commission, *Sustainable Forestry and the European Union - Initiatives of the European Commission*, 2003
http://ec.europa.eu/agriculture/publi/brochures/forestry/full_en.pdf
7. Department for International Development, (UK) Timber Trade Federation, *EU Market Conditions for "Verified Legal" and "Verified Legal and Sustainable" wood products*
<http://www.ttf.co.uk/Document/Default.aspx?DocumentUid=E6285CB8-77BF-4541-A244-9469895D6C88> p.3.
8. Forest Owners Association, *New Zealand Plantation Forest Industry – Facts and Figures*, 2010/2011 <http://www.nzfoa.org.nz/images/stories/pdfs/fandf2011web.pdf>
9. http://www.daff.gov.au/data/assets/pdf_file/0008/1872611/Final_regulation_impact_state_ment.pdf p.9.
10. From Australian Forestry Standard website <http://www.forestrystandard.org.au>
11. From Farm Forest Line web-site, "Native Forest Silviculture"
http://www.farmforestline.com.au/pages/5.10_native.html
12. From NSW Government Office of Environment and Heritage web-site, "Private Native Forestry" <http://www.environment.nsw.gov.au/pnf/index.htm>
13. http://www.cleanenergy.qld.gov.au/vegetation_management.cfm
14. <http://www.ttf.co.uk/Document/Default.aspx?DocumentUid=E6285CB8-77BF-4541-A244-9469895D6C88> p.13
15. Presentation by Mike Snow, Executive Director American Hardwoods Export Council, "Risk analysis as a tool for legality – Lessons from North America", *Joint Policy Workshop - Implications of recent trade legislation within the UNECE region for the global forest-based sector*, Brussels, Belgium, 13 April 2011
http://www.eesc.europa.eu/resources/docs/10_mike_snow.pdf
16. <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-banning-illegal-logging>