



Submission No 1

Inquiry into Illegal Logging Prohibition Bill 2011

Name: Rupert Oliver
Sustainability Consultant

Organisation: American Hardwood Export Council



ADDITIONAL SUBMISSION ON INTERNATIONAL TRADE ISSUES TO SENATE INQUIRY ON THE ILLEGAL LOGGING PROHIBITION BILL 2011

Further to our previous submission to the Senate Rural Affairs and Transport References (RATR) Committee, and having reviewed the content of the RATR Committee's report, the American Hardwood Export Council (AHEC) submits the following additional comments on "international implications of the bill" to the Trade Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade.

AHEC fully endorses the view expressed by both NZMAF and the Government of Canada in their comments to the RATR Committee "that countries that represent a low risk of exporting illegal timber, due to their effective legislative supervision, should not be required to undergo the same level of scrutiny as countries or regions posing a higher level of risk". Furthermore AHEC strongly agrees with the view expressed by NZMAF that there "needed to be assurance that countries that present a low risk of exporting illegally logged forestry products...are not subject to unnecessary, onerous or costly requirements".

As noted in AHEC's submission to the RATR Committee, we believe that the existing text of the Bill already addresses many of these concerns, specifically by:

- Introducing 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 (although this needs clarification – see below);
- Requiring introduction of a due diligence system by importers and primary processes "only for the purposes of reducing the risk that imported timber products are made from, or include, illegally logged timber" (Division 2, 14, (2)).
- Requiring that the importers' declaration contains only an affirmation that they have completed due diligence processes in line with the requirements of the Bill and does not impose an unrealistic obligation on the importer to explicitly declare "legal origin" at the border.

Therefore AHEC welcomes the RATR Committee's single recommendation to pass the Bill in its current form. We also welcome the RATR Committee's appreciation of the challenges for timber exporting countries in ensuring the legality of exported timber and their acknowledgement that "consultations on the regulations prescribing due diligence be undertaken through continued bilateral cooperation with timber exporting countries in the region, and through multilateral engagement on forestry through existing forums".

Promoting efficient implementation of the Bill by smaller enterprises

AHEC would also draw the Committee's attention to the approach adopted by AHEC to provide a credible assurance of negligible risk of illegal logging in a supply chain dominated by smaller enterprises and a relatively high level of complexity and fragmentation.

The Seneca Creek Associates (SCA) study commissioned by AHEC in 2008 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 (see <http://www.americanhardwood.org/sustainability/sustainable-forestry/seneca-creek-study/>).

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 SCA study to take account of potential changes in patterns of U.S. hardwood trade and the regulatory environment. The next review is now due to be undertaken in the first half of 2013.

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

Furthermore, AHEC believes that the approach of independent and peer-reviewed, region or product-specific risk assessment exemplified by the SCA study may have wider relevance to other similarly complex supply chains. The Australian government could contribute to efficient, effective and equitable application of the Illegal Logging Prohibition Bill, and similar laws in the US and Europe, by working internationally with government agencies and other



stakeholders to develop an appropriate protocol for preparation of equivalent risk assessment studies for other supply regions and products.

Widespread use of such studies, which may be commissioned by exporters (as in the case of the SCA study) but undertaken by independent agencies and subject to peer-review in line with an internationally agreed protocol, would both reduce costs in exporting countries and simplify and reduce costs of due diligence by Australian importers.

Misunderstanding of the “burden of proof”

The RATR Committee notes in their report that “many of the submissions were based on a misunderstanding regarding the burden of proof for a criminal conviction in such a case”. AHEC agrees with this comment and believes that an important source of this misunderstanding derives from the Legislation Committee Recommendation 2, which is repeated and supported in GAP’s submission to the RATR Committee, that “the declaration form [should] be a legally binding and enforceable declaration of legality”. We believe this proposal is misguided and unworkable on the following grounds:

- The proposal amounts to a reversal of the burden of proof.
- The proposal directly conflicts with the rationale for a risk-based due diligence system (which can only ever demonstrate “negligible risk” and cannot provide “proof” of legality).
- The proposal would involve imposition of unnecessary, onerous or costly requirements irrespective of the level of risk and would be particularly burdensome for small operators (since “proving legality” implies systems capable of tracing 100% of wood products back to specific forest of origin).
- The proposal would be inconsistent with the Australian government’s stated intent of close alignment to the Lacey Act Amendment and EU Timber Regulation (neither of which reverses the burden of proof).

We are disappointed that having identified lack of clarity over the burden of proof as a problem, the RATR Committee report itself then does nothing to address these issues. However, we appreciate the RATR Committee’s specific recommendation that the issue be clarified, in a timely manner, through an information campaign that forms part of a broader outreach strategy.

AHEC believes many of the trade-related objections to the Bill could be dealt with through outreach activities making clear that:

- The Bill does not impose a requirement to demonstrate proof of legality, or full traceability, on timber products imported into Australia.
- The burden of proof for a criminal conviction under the prohibition articles of the Bill lies with the Australian government that would have to demonstrate wood is illegally sourced in order to prosecute.
- The Bill is founded on a risk-based approach so as to avoid imposition of additional and unnecessary controls on timber which are negligible risk with respect to illegal logging.
- The Australian government intends to recognise a wide range of credible procedures for demonstrating negligible risk which are adapted to the particular circumstances prevailing in individual supply countries.
- There is no intent by the Australian government to impose mandatory requirements for forest certification or other evidence of “forest sustainability” on imported wood products in the absence of an internationally-recognised and WTO-compliant framework for verification of sustainability.

Michael Snow
AHEC Executive Director
AHEC Headquarters
1825 Michael Faraday Dr.
Reston, VA 20190
USA
Tel: 703/435-2900
Fax: 703/435-2537
Email: msnow@ahec.org