



Submission No 18

## **Inquiry into Illegal Logging Prohibition Bill 2011**

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# **Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade.**

## **Illegal Logging Prohibition Bill**

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## Purpose of this submission

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This submission addresses issues raised by Canadian, Indonesian, New Zealand and Papua New Guinea submissions to the Senate Rural and Regional Affairs and Transport Legislation Committee inquiry.

We have also included relevant information on how Australian led DNA technology is transforming timber legality issues and governance globally.

## Our Perspective

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Double Helix Tracking Technologies Pte Ltd (DoubleHelix) is an international company that supports legal timber supply chains and forest governance globally through the application of cutting edge genetics.

Our Chief Scientific Officer, Andrew Lowe, is also Professor of Plant Conservation Biology and Director of the Australian Centre for Evolutionary Biology and Biodiversity at the University of Adelaide.

We are signatories to the Common Platform and we have in depth and first-hand knowledge of the Lacey Act, European Timber Trade Regulation, Indonesia's SVLK and the FLEGT process.

*Australian DNA Technology* makes it possible to identify species and geographic location of timber products; independently verifying claims and preventing illegal logs being laundered into legitimate supply chains.

Australian timber importers have been using our technology and legality standard services since 2007. In fact Australian businesses were the first in the world to adopt DNA technology as a highly reliable and low cost solution.

Today it is increasingly used in many parts of the world.

## Canadian submission by David McKinnon 20 December 2011

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1. The implementation of the Bill and subordinate legislation may impose unnecessary burdens and costs on trade in forest products from countries with effective legislative supervision and discourage imports of timber into Australia.

Australia is not alone in legislating for the legality of timber products traded.

The USA and EU have introduced legislation in the form of the Lacey Act and EUTR. These two markets account for significant trade in timber products. Trade clearly has to adapt for these markets and in doing so will adapt to Australian requirements. The Australian Bill is not adding to a problem; it represents Australia joining a growing international movement to prevent the trade in illegal timber products.

Is it true that costs are prohibitive?

The assertion that costs will be prohibitive and discourage trade is not backed up by any evidence. Cost is frequently raised as an objection, but is generally not calculated. In fact additional costs are either not high or not present at all depending on the type of trade and the degree of organisation of the trader.

Due diligence can be met by reasonable requests for documentation. The raised cost assertion also fails to take into account the following:

- Due diligence requirements for the EUTR are similar.
- Due care requirements for the US Lacey Act are similar.
- There are many excellent free tools available for risk assessment.
- Exports directly from Canada to Australia with existing documentation would probably suffice and not represent additional cost.
- Documentation required by any reasonable and well organised Australian business would probably suffice and not represent additional cost.

## Cost drivers in timber products should drive efficiency not criminality.

Market pressure on price in the timber products sector leads to two main responses by industry:

- Better wood reclamation and technological advancement in secondary processing such as composite materials and laminates.
- Incentivises the entry of cheaper illegal timber into legitimate supply chains through timber laundering and organised illegal logging activities.

## Indirect trade of Canadian harvested timber products

An important issue implied, but not overtly stated in the Canadian submission is overseas mislabelling of species and country of harvest.

It would be interesting to discover to what degree timber is mislabelled and sold on the global market as Canadian and what steps are taking to protect the integrity of their national timber brands.

A forthcoming INTERPOL Report will attempt to calculate the extent of cross border smuggling from the Russian Far East to China. Anecdotal evidence points to the fact that this is significant. Russian timber is relabelled as European or from the United States and Canada to circumvent high risk assessment control and meet customer expectations or requirements.

The only time that Canadian timber might come under a higher risk assessment is when raw logs have been exported to factories in high risk countries where timber laundering, lot substitution and species substitution are common.

### Is traceability impractical?

It is suggested that traceability is impractical for primary (aka sawmill) and value-added (aka secondary) manufacturers.

This is not necessarily true today and certainly should not be true for the future. The point seems to be that it's too expensive to apply traceability to timber products and therefore we should all accept illegal timber in legitimate supply chains. Progress is not achieved by acceptance of the status quo.

Liberia has instituted an IT tracking system for timber exports, many countries are signing Voluntary Partnership Agreements with the EU. Genetics is being used at low cost in China, Africa, South East Asia and by importers in Australia as a simple, affordable and secure traceability solution.

To suggest traceability is unpractical is inaccurate.

### 2. As a result of the imposition of greater burdens on imported timber products, the implementation of the Bill could favour processing of timber products in Australia to the detriment of Australian consumers.

Three points are being made in this section.

#### An unfair advantage is given to timber products that originate from timber harvested in Australia.

This is equally true for the USA, EU and Indonesia with respect to their legislation. It hasn't been a barrier for them so why should it be any different for Australia?

#### It's too costly to perform due diligence and traceability.

We refer to previous points made about unsubstantiated claims about cost. Costs tend to be felt by poorly organised businesses that are already inefficient or reliant on cheap, illegal sources.

### Due care requires prior knowledge of which sources present risk.

There is a great deal of information freely available on risk factors and this is being increasingly organised to assist businesses with EUTR and Lacey Act compliance. It is worth considering as part of the Australian approach to supporting legal imports to draw on this information and facilitate access.

It is important to recognise that where a product is manufactured can represent risk, not just the alleged country of harvest.

### Indonesian submission by Primo Alui Joelianto 30 January 2012

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The Indonesian submission makes several points about the Australian Illegal Logging Bill being potentially protectionist and against rights within the terms of WTO. We are unable to provide constructive or detailed feedback on these issues but do observe that the Lacey Act, EUTR and SVLK (Indonesia's own legislation) do not seem to have this problem.

The FLEGT process of bilateral agreements has in the case of Indonesia culminated in the Voluntary Partnership Agreement (VPA) between the EU and Indonesia. This supports the Indonesia's Timber Legality Assurance System (SVLK).

It is not frequently considered, but SVLK also has an impact on timber imported from overseas into Indonesia. This means that imported timber from the USA, or Australia, to Indonesia which is then re-exported will need to comply with SVLK.

SVLK is widely recognised as an important step that the Indonesian Government is taking towards improved governance. We believe that Australian legislation further supports the importance of SVLK to be taken seriously, especially domestically within Indonesia.

We note that a recent Greenpeace investigation identified Ramin in the log yard of Indah Kiat mill in Perawang, Sumatra – an APP paper mill. Indah Kiat has a SVLK Certificate that verifies that it operates legally.

Ramin is a species protected by the Government of Indonesia under CITES. It remains to be seen whether any Corrective Action Request will be issued by the auditors responsible for issuing Indah Kiat's SVLK certificate.

Presumably it is not possible to maintain a valid SVLK certificate whilst knowingly processing tree species protected under CITES.

It is early days for SVLK and these are the sorts of issues that need to be resolved before markets accept it as being a legitimate legality verification system. Interaction between Australian importers concerned about legality due to legislation in Australia and SVLK certificate owners will support this process.

We provide further comments on SVLK as part of our submission on certification systems on page 12 of this paper.

## **Papua New Guinea Forest Industries Submission**

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This submission rightly identifies that the deliberately broad definition of "illegally logged" could raise a risk for developing nations "with unclear legal regimes".

PNG certainly has problems of uncertainty with forest governance and land rights issues. Problems in forestry in PNG are well documented and all actors in this country can agree that the situation needs to improve.

For example; Chinese factories import Merbau logs from PNG and process these into flooring and decking products. These products are often relabelled as having been harvested in Malaysia and exported under that country of origin name. Actual exports from PNG are almost certainly greater than official records indicate.

The continuing movement for international legislation such as the Lacey Act, EUTR, SVLK and the Australian Illegal Logging Bill is especially constructive for encouraging greater governance in nations with unclear legal regimes and as such should be seen positively.



## New Zealand Submission

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This submission makes the point that due diligence requirements should not be overly prescriptive concerning the evidence necessary to substantiate legality.

This is a very practical suggestion as not only should due diligence requirements be different for different markets and products with higher or lower risk assessment, but they should also evolve over time.

New technology is making it increasingly cheaper to manage Chain-of-Custody systems for timber products. For example the DNA Chain-of-Custody element for timber decking from Indonesia to Australia costs just US\$ 0.75 per m<sup>3</sup> whilst the product itself is over US\$2,000 per m<sup>3</sup>.

The United States Government and European Governments, especially Germany, are promoting the widespread adoption of genetics as a solution for verifying claims of legality.

The Australian Research Council Linkage Project is funding AU\$280,000 as part of a much wider International Tropical Timber Organisation Project (US\$3 million) that is creating genetic maps of African nations and implementing Australian DNA technology for national Chain-of-Custody systems there.

These systems are likely to become the basis for a wholly new approach to timber Chain-of-Custody in the 21 century.

## State of DNA technology for timber legality

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There are three main approaches that DNA can be used to answer questions about the validity of a supply chain, origin of timber or nature of a species. They are summarised below.

Scientific approach	Description	Examples of use
Population genetics	Study of genetic variation of a species across distance based on four evolutionary processes: natural selection, genetic drift, mutation and gene flow.	<ul style="list-style-type: none"> <li>• Was this timber harvested from the declared country or region?</li> <li>• Does this timber come from a conservation area?</li> <li>• Does this timber come from natural forest or a plantation?</li> </ul>
DNA fingerprinting	A way of identifying a specific individual of the same species. Most commonly used to identify paternity and for identifying criminals.	<ul style="list-style-type: none"> <li>• Does this product come from this log or stump (is the chain-of-custody intact)?</li> <li>• Has this log or lot been swapped with other trees of the same species (log laundering)?</li> </ul>
DNA barcoding	A taxonomic method that studies a relatively short portion of DNA to identify it as belonging to a particular species.	<ul style="list-style-type: none"> <li>• Is this timber of the declared species?</li> <li>• Is this timber a CITES listed species or not?</li> </ul>

A detailed Report made for the US Government in July 2011 that includes case studies is available for download here, as is an 8 minute video that introduces the subject in more detail.

<http://www.doublehelixtracking.com/company/report/>

## Provision for scientific samples

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We propose that timber samples for scientific purposes or for testing the validity of timber supply chains be exempt from the Illegal Logging legislation. An individual sample would be a square about 5cm x 5cm and around 3cm thick and would have no commercial value in this form.

## Inspections

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In the Bill considerable detail is given to the rights of inspectors to operate electronic equipment when carrying out inspections and to make copies of documents.

We recommend that the legislation should also provide that inspectors have a right to take small wood samples for DNA and other analysis:

- Independently verify species declarations.
- Randomly spot check species and collect data on imports.
- Only a small 5cm x 5cm piece around 3cm thick is required.
- Demonstrates legislators recognise and are ready for the future.
- Increasingly can be matched to genetic maps for verification of origin.

## Declaration of species

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Scientific species name should be part of a declaration requirement.

Colloquial, or common, names vary greatly and can be manipulated to suit market demand or compliance requirements.

Species is currently misdeclared for numerous reasons including:

- Tax avoidance purposes in producer countries.
- To facilitate mixing species when insufficient sources are available.
- Lack of interest in any form of due diligence or enquiry into product origin.

Scientific species name is a requirement for Lacey Act, EUTR and as part of many procurement policies of timber importers and businesses around the world.

Declaration of species using the scientific name also provides Australian Customs Officials with effective criteria to test the declaration using independent third party scientific techniques.

It can therefore be seen as a reasonable minimum standard for due diligence.

## Traceability

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For the legislation to have a meaningful and positive effect on supply chains some form of traceability should be required.

The FLEGT Briefing Note No.7 Guideline for Independent Monitoring 2007 states:

*All certification and legality systems, whether mandatory or voluntary, must have a mechanism to track timber from the forest source to export. Such systems are designed to exclude timber from unknown or illegal sources, as well as enable independent monitoring to provide assurance to all interested parties that the system is working as planned and maintain its credibility.*

Without some form of traceability it is impossible to exclude illegal timber from entering the supply chain.

Consumers are also requiring higher standards of due diligence and traceability by suppliers. We are running tests across numerous international supply chains for large companies. However small scale consumers are also taking an interest, in November 2011 we were contacted by a home owner in Melbourne seeking a test to verify the country of origin for an oak floor supplied by a local builder.

## Timber laundering

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In the Asia Pacific region the trafficking of timber involves corruption in a range of processes along the entire demand and supply chain including logging, trading, manufacturing, importing and consumption.

Transparency International argues that; “Building the capacity of customs officials is essential to ensure that they can play an efficient role in identifying timber laundering activities, including ensuring that personnel are well trained and can *authenticate sources of timber* and their accompanying documents.”

## Certification schemes

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Certification schemes vary greatly in their standards and requirements and how they are applied by audit companies in different supply chains across the world.

Although holding some form of certification is often a positive step that represents a commitment to source from acceptable sources they do not necessarily represent proof of origin or legality in themselves. For simplicity we shall look at three certification schemes.

### Indonesian Timber Legality Verification System (SVLK)

SVLK has been welcomed as a step in the right direction for Indonesia. The EU has signed a Voluntary Partnership Agreement with Indonesia and this should come into effect later in 2012 if monitoring arrangements are finalised satisfactorily.

However it is widely accepted that it will not be until at least 2016 before the following key requirements for evaluating SVLK can be concluded:

- Establishing how much fraud there is in SVLK through EU Periodic Evaluation and Civil Society processes.
- Clear demonstration that the level of fraud is decreasing on a year by year basis and that SVLK is acting as an effective legal tool to reduce illegal logging.

SVLK is still very much in its early stages and does not yet guarantee that illegal timber is excluded from a supply chain.

## FSC and PEFC

FSC and PEFC are well recognised international brands representing sustainable forest management. Their Standards predate international legislation and market demand for proof of legal origin of timber products.

As such both these standards are currently undergoing consultation and written revisions to adapt to Lacey Act and EUTR including examining DNA and other technologies to strengthen Chain-of-Custody requirements.

In June 2011 the Forest Stewardship Council's Executive Director, André de Freitas referred to traceability as the biggest priority for FSC for the next five years.

*At the same meeting Phil Guillery, FSC System Integrity Director stated; "Currently, certificate holders are responsible for each node in the supply chain, but we have no system to trace material through the whole supply chain. And we are drawing closer to a tipping point: more questions of fraud are going to occur – this is an inevitable consequence of having grown from a handful of certificates to thousands".*

FSC is going through some significant changes to respond to these issues including significant improvements in their ability to track products along supply lines.

As market leader they will likely create the need for PEFC to follow suit.

## Certification fraud

As certification often conveys a premium value onto a product, and the trade suffers from corruption and timber laundering, there is an incentive to fraudulently label products under successful certification brands.

The United States Department of Justice does not recognise that holding a certificate claim necessarily represents "Due Care".

Customs officials will require an option to independently verify certificate claims when they believe the declaration is fraudulent.

## Genetic Checkpoints

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Legislation without the opportunity for reasonable compliance and effective enforcement is fruitless.

Australia is playing a leading role in DNA barcoding of species, especially trees. Adelaide University hosted the fourth International Barcode of Life Conference in November 2011.

The technology development led by Professor Andrew Lowe is currently being deployed in the supply chains of Australian, European and US timber importers. Each month over 60 container loads (1,200m<sup>3</sup>) of DNA verified timber is imported into Australia from Indonesia.

We recommend that the legislation is written with a view to current and future capabilities for affordable compliance and effective enforcement. The benefits of this will include:

- Future proof legislation.
- A stimulus for Australian technology innovation.
- Demonstration of best practice to legislators in USA and EU.
- A clear message to overseas timber launderers and criminal organisations.

A practical first step towards this is a programme for genetic screening imports of Merbau (aka Kwila) products into Australia.

Merbau is proposed as:

- Australia is one of the largest importers of Merbau.
- It is a high value wood costing over US\$2,000 per m<sup>3</sup>.
- It is at high risk of illegal logging and cross border smuggling.
- A genetic map of Merbau exists is already used to commercially to trace origin.

Carried out prior to legislation taking effect it will result in no prosecutions and provides importers with time to re-examine their supply chains and will:

- Promote Australian innovation in the biotechnology sector.
- Provide an effective enforcement tool for the Illegal Logging Act.
- Develop a cheap pre-competitive method for business to comply with legislation.

The communication value to businesses in Australia, across Asia and to legislators in Europe and the USA will be huge and vastly more effective than an outreach communication campaign.

### Contact us

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We are available to attend a Senate Committee meeting should you want a briefing or to ask any questions on issues raised in this submission.

Further information is also available online:

<http://www.doublehelixtracking.com>

<http://www.naturesbarcode.com>

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