



Submission to: Senate Rural Affairs and Transport Legislation Committee

Re: Inquiry into the exposure draft and explanatory memorandum of the

Illegal Logging Prohibition Bill 2011

May 2011

The Timber Development Association (NSW), (TDA), is an industry funded association representing all segments of the timber industry, from manufacture to supply. Established in 1938 to promote the use and sale of Australian and imported timber, the TDA now concentrates on the technical advancement of timber within the construction sector by advocacy, R&D and educational projects.

The TDA supports the Australian Government's latest actions directed at restricting the availability of illegally logged timber and wood products to Australian consumers. TDA, with the funding assistance of Department of Agriculture, Fisheries and Forestry (DAFF), worked constructively with the timber and wood products industry to develop the draft generic code of conduct which will form the basis of supporting regulations. We continue to work with the timber industry within Australia and internationally on this matter.

Our general comments on the Bill and explanatory memorandum are followed by some specific comments under particular sections and are as follows:

General Comments

The Bill is progressive in that it requires actions to reduce availability of illegal logged wood products at key points in the supply chain, thus avoiding costly and unnecessary chain of custody requirements to point of sale by downstream parties. Parties wishing to demonstrate to customers that the wood product they supply is not derived from illegally logged wood will be able to utilise these requirements and simple contractual requirements which are enforceable by Australian Consumer Law.

TDA commends the Australian Government for avoiding imposing costly and unnecessary chain of custody further down the supply chain.

It is curious that the term due diligence does not appear in the Bill even once, given that the RIS made much of it and the draft generic code of conduct and EU Timber Regulation both require importers and others to implement a due diligence system which meet key criteria. In addition a duty of care is undertaken by many importers in the US to minimise the risk of importation of illegally logged wood products and breaches of the Lacey Act. TDA considers it essential that importers implement a due diligence system to minimise the risk of importing or processing illegally logged timber and wood products.

TDA submits that importers and processors be required to implement a due diligence system that meets core criteria should be the basis for approval to import or process.

The associated detailed regulations will be critical to the effectiveness and efficiency of this legislation when enacted. Overly bureaucratic regulations, or regulations developed by consultants or others with little or no knowledge of the workings of the respective wood products industry could seriously undermine the viability of some companies.

TDA submits that importers and processors, and their respective industry bodies, be given a predominate role in developing and/or guiding the development of the regulations to implement the objectives of the legislation.

Specific Comments

Section 2 - Commencement

TDA notes that these transitional measures are similar to those in the US Lacey Act and the EU Timber Regulation.

TDA supports the implementation timing arrangements set out in Section 2.

Section 5 - Definitions

The term *illegally logged*, is defined as timber “harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.” This definition is vague and may not be as strong as other jurisdictions, meaning Australia is out of step. If Australia has a different definition for *illegally logged* this may cause problems for producer countries supplying Australia as well as certifying bodies. Uncertainty also creates unnecessary expense.

TDA submits that the Senate Committee closely examine this definition and refine it.

The term *timber product* is defined as “a thing that is, is made from, or includes, timber.” Timber is commonly known and regarded as a wood product manufactured for use as a building material. We understand the objective is to restrict the supply of illegally harvested timber and wood products thus the focus solely on ‘timber’ is misleading. We strongly suggest the definition be changed to “wood products” which includes timber and all wood products such as sawn timber, plywood, paper, wood furniture etc. The RIS has shown that the greatest value of wood products, from areas that are commonly regarded areas with high risk of incorporating illegally logged wood, are actually wood products such as paper products and wood furniture, not sawn construction timber.

TDA suggest the following definition: “Wood product means a thing that is, is made from, or includes timber, wood or wood fibre.”

The term “importer” is not defined. It will need to be otherwise the use of agents and other parties may increase to avoid the requirements of the Act.

TDA submits that the term “importer” be carefully defined.

Section 6 - Importing regulated timber products

It is unclear which person would be penalised if they breached this section. For example is the person a chief operating officer, a director or directors, the truck driver importing the goods. We speculate that it would be the first owner of the wood product in question when it is imported but it is not clear.

TDA submits that consideration be given to defining the liable person or persons in this Section 6.

The draft Bill is, as expected, precise in defining an offence and a very significant penalty. However the gaol term only applies to importers, not domestic raw log processors.

TDA submits that for equity reasons the same penalty apply to domestic processors and importers.

Section 9 - Approval

The Bill proposes that the minister approve *timber industry certifiers* to give effect to the Act and to approve individual timber product importers and domestic processors by ensuring these importers and domestic processors meet the *illegal logging requirements*. Certifiers are already used within the timber industry to certify that products meet a range of quality and environmental standards. The term *timber industry certifier* is a tautology. It is expected that certifiers to these other quality and environmental standards will extend their services to these illegal logging requirements.

TDA submits that the term timber industry certifiers should be reduced to just certifiers.

Section 10 - Cancelling approval

The Bill also proposes that approval by the Minister may be withdrawn if a person or company approved by the timber industry certifier does not comply with the illegal logging requirements. Minor breaches of the illegal logging requirements should not be able to trigger withdrawal of approval.

TDA suggest that the Minister’s powers to withdraw approval only be possible if there a there is significant non-compliance with the illegal logging requirements by approved persons or companies and, despite evidence of significant non-compliance, approval of persons or companies to import of process was still given by the timber industry certifier.

Section 11 - Timber industry certifier requirements

TDA feels that the Government is confusing the role of the certifiers with that of the requirements (and the development of Codes or Standards to certify against) in this proposed legislation.

TDA strongly suggests that the committee examine and incorporate the European Union's (EU) requirements for Monitoring Organisations under the EU Timber Regulation into the Bill.

The potential liability and insurance requirements of *timber industry certifiers* if importers approved by such certifiers are subsequently found to have imported illegally logged timber or in other ways be in breach of provisions of the Act also needs to be clarified.

Section 12 – Matters that may be included in timber industry certifier requirements

These matters are very vague as the detail will be sorted out in the regulations. However as noted above, the development of codes of conduct should be removed from this list as this is not an appropriate role for a certifier.

Sections 13 &14 – Legal logging requirements

The note in the Explanatory Memo that adherence to the *illegal logging requirements* will mean that “importers will avoid breaching the prohibition on importation of illegally logged timber”. This statement is not supported in the actual draft bill. That is, people may still import illegally logged wood products and cause an offence (and be penalised) even if they follow the requirements.

Despite advice in the explanatory memorandum, it is unclear if importers will avoid prosecution if they are approved by timber industry certifiers and are subsequently found to have imported illegally logged timber.

TDA submits that, at a minimum, a clause should be included in the Bill that compliance with illegal logging requirements, and approval, will mitigate any penalty if an importer is subsequently found to have imported illegally logged wood products.

TDA looks forward to contributing to the creation of effective and efficient means of controlling the availability on the Australian market of illegally logged wood and timber products. As such, TDA is available to discuss these issues in more depth with the Committee.

Timber Development Association

May 2011