

Illegal Logging Prohibition Bill 2011 – brief summary comments

The following summary comments are provided to assist the Senate Rural Affairs and Transport References Committee Inquiry into the *Illegal Logging Prohibition Bill, 2011*. A more detailed submission may be provided if time permits.

- Australian Forestry Standard Ltd (AFS Ltd) welcomes the opportunity to provide input to the Committee.
- AFS Ltd supports action to address the important issue of illegal logging and the negative environmental, social and economic impacts which it has, both in the countries where it occurs but also in countries where products from these activities are traded.
- It is widely accepted, both internationally and in Australia that wood harvested from a forest which is certified against a credible sustainable forest management (SFM) standard, such as AFS or PEFC, meets all legality requirements. However, SFM certification goes well beyond demonstrating legality and it is therefore vital that compliance with legality requirements is not allowed to be presented, implicitly or explicitly, as equivalent to SFM certification. If this were to occur it would undermine much of the motivation for SFM certification, would penalise those companies which have invested in achieving and retaining certification and could potentially result in a decline in the quality of forest management around the world.
- The *Illegal Logging Prohibition Bill, 2011* appears to be a substantial improvement on the March 2011 *Exposure Draft of the Illegal Logging Prohibition Bill 2011*, as a result of the adoption of many of the recommendations made by the Senate Standing Committee on Rural and Regional Affairs and Transport following the previous inquiry.
- The key change to the previous Exposure Draft of the legislation is the adoption of due diligence requirements and Customs declarations rather than a potentially complex and bureaucratic licensing and code of practice based approval system. This approach is supported because it (1) provides greater flexibility for importers and domestic processors to comply in an efficient and effective manner appropriate to the nature of their activities and (2) reduces the likelihood of an importer or domestic processor being able to claim that the system gives them some form of Government “endorsement” that can be used in promoting themselves or their products.
- Any comment about the legislation must be qualified by acknowledgment that a number of key aspects of the arrangements will only be fully enunciated via Regulations. Without seeing detailed draft Regulations it is not possible to be entirely confident about the merits or otherwise of the whole package.
- The regulations will have at least three key roles, (1) defining regulated timber products, (2) prescribing the manner and form of Customs declarations and (3) setting out due diligence requirements.

- Clauses 14(5) and 18(5) are of fundamental interest to AFS Ltd as they provide greater clarity and examples of what will be acceptable due diligence requirements. AFS Ltd welcomes the fact that clause 14(5)(b) specifically recognises “*rules or processes established or accredited by an industry or certifying body*”. It is assumed that the Australian Forest Certification Scheme would be specifically recognised as acceptable to meet due diligence requirements under the Regulations. It is not clear why the words “*or certifying body*” have been omitted from 18(5)(c). It is suggested that they be added.
- AFS Ltd is concerned that clauses 14(5) and 18(5) provide too greater flexibility for what might be acceptable as due diligence requirements. However, this will only be apparent once Regulations are drafted. It is also acknowledged that clauses 14(6) and 18(6) provide that the preceding subclauses do not limit the subsection.
- It would be more appropriate for 14(5) and 18(5) to set out a number of principles for acceptable due diligence requirements rather than providing examples of the types of mechanisms that may satisfy due diligence requirements. The principles set out in the regulations should require that any/all due diligence systems be:
 - Risk-based (i.e. dealing with higher risk sources in a more stringent manner);
 - Comprehensive (i.e. cover all products);
 - Documented with documents retained for a defined period;
 - Auditable;
 - Required to be considered and endorsed by responsible officers (Directors);
 - Flexible and supportive of existing certification processes; and
 - Required to be reviewed and updated on a regular basis.
- Regardless of the degree of flexibility provided in the definition of due diligence requirements, AFS Ltd hopes and expects that a significant number of importers of forest products and domestic processors of logs will choose to meet the due diligence requirements by committing to purchase only wood produced from forests certified to a credible SFM standard and delivered via a certified chain of custody.
- AFS Ltd and PEFC are committed to providing an objective, transparent and consistent system that Australian consumers, producers and the Parliament can rely on to ensure not only the legality of the supply of wood products but also the good management of the forests from which these products are obtained.

Richard Stanton
National Secretary
13th December 2011