



Minority Report—Coalition Senators and Members

The evidence presented to the Trade Sub-Committee shows that there is considerable unease amongst our key regional trading partners at the lack of consultation on the proposed Illegal Logging Prohibition Bill and subordinate legislation. In particular there is a real concern with the gap between the Bill being passed and its regulations coming into force, over the time allocated for consultation on the regulations, and on what form the consultations on the regulations will take.

The evidence presented to the Trade Sub-Committee also clearly shows that important regional trading partners believe this Bill will harm their trading relationship with Australia and that there is legal uncertainty as to whether the Bill is World Trade Organisation (WTO) compliant.

It is indisputable that as soon as it enters into law, the Illegal Logging Prohibition Bill will cause uncertainty in Australia's timber trade because importers will not know what the precise impact of the legislation will be until the regulations are enacted.

The Government has indicated that the regulations would be developed in consultation with key stakeholders yet has done nothing to clearly demonstrate how this will be done.

The Department of Agriculture, Forestry and Fisheries estimate that they can produce the regulations within six months. Yet evidence submitted to the inquiry indicated that little progress has been made on the content of the regulations and that fundamental issues remain unresolved.

The Government has also indicated that the regulations will come into force two years after the Bill receives Royal Assent and also indicated that the regulations will be tabled in the Parliament within six months of Royal Assent to give exporters and importers time to establish due diligence. However, the

Government also made it clear that parties could be open to prosecution during this two year stand-off. This lag between the Bill and the regulations is of genuine concern.

In giving evidence the Gillard Government highlighted how its consultative process has been found wanting. While noting that it has been consulting on the proposed legislation since 2008 it admitted that:

As the more detailed process of developing the regulations is now underway, more in-depth consultation with stakeholders is being and will be undertaken to assist their development and to ensure they operate as intended.¹

The Government needs to clearly set out how the consultations on the regulations will take place with the Australian timber industry and our international trading partners and the timeline for these consultations.

In its submission Papua New Guinea recommended that:

More organised consultations be held with trading partners particularly the developing countries on the proposed legislation.²

It should not introduce the legislation until the enabling subordinate legislation is finalised and is released for public comment and a satisfactory consultation period has taken place on both the legislation and the regulations. Based on evidence submitted to the sub-committee that may take at least 18 months to 2 years.

As well as concerns over the consultation process, there are also real concerns being raised over the cost of compliance with the Bill and its yet to be drafted regulations.

As the submission from the Canadian Government states:

Canada is concerned that third party certification schemes may be too heavily relied upon as the means to addressing the due diligence requirements set forth in the Bill, to the exclusion of other approaches for meeting the due diligence requirements...
...Relying upon chain-of-custody certification as proof of legality could present a barrier to trade for many smaller producers or those exporting complex products.³

The content of the Bill and the way in which it has been handled to date has already arguably caused harm to our trading relationships and if passed will very possibly lead to more harm occurring. The Indonesian Government, already

1 Mr Mark Tucker, DAFF, Committee Hansard, 9 May 2012, p. 11.

2 Papua New Guinea High Commission, Submission 21, p. 4.

3 High Commission of Canada, Submission 22, p. 1.

irritated by the way in which Australia placed a hasty and ill-conceived temporary ban on live cattle exports, made clear in its submission that:

The implementation of the Bill is also likely to undermine the development of trade between Indonesia and Australia based on our respective mutual interests. In this respect, reference is made to the recent efforts of the Government of Indonesia to accommodate and resolve the problem faced by Australia during the self-imposed ban on beef exports to Indonesia.⁴

It is self evident that this is a relationship which we need to repair, not worsen. Indonesia is Australia's largest neighbour and a key member of ASEAN. It is already Australia's most important beef and wheat market. If we do not respect the relationship, it will not only be Australia's trade interests that suffer.

The Government of Malaysia also raised its bilateral relationship with Australia in its submission:

While Malaysia fully understands that the objective of the Bill is laudable, Malaysia would like to see that the implementation of the Bill will not in any way hamper the good bilateral trade relationship particularly in timber products.⁵

Countries that gave evidence referred to the actions and measures they have taken to reduce illegal logging and to demonstrate to purchasers of their timber products are legally procured. All requested that these systems be recognized in Australia as demonstrating legality. They also noted that the Bill will require Australian authorities to demonstrate to their own satisfaction the validity of their schemes; in effect it has been argued that this amounts to a vote of no-confidence by the Australian Government in the capability of some of our key trading partners. This is one of the key reasons why it is in Australia's national interest to avoid using unilateral trade measures wherever possible. The use of unilateral trade restrictions has a long history of causing disputes between trading partners. Australia has consistently opposed the unilateral imposition of trade measures by the EU and the US. Due to the damage they can cause to trade relations between countries, it is against our self interest to use such measures unless there are no other alternatives.

Evidence presented to the inquiry suggests the Illegal Logging Prohibition Bill may be unsound in international law. Although legal opinion is divided, there are indications the Bill is highly likely to face legal challenge in the WTO.

4 Ministry of Trade Indonesia, Submission 13, p. 2.

5 Malaysian Ministry of Plantation Industries and Commodities, Submission 3, p. 5

In its submission the Government of Canada put Australia on notice when it noted:

While Canada has concerns related to some of the potential trade implications of the Bill, Canada is pleased that the Government of Australia is committed to ensuring that the Bill and associated regulations are consistent with international trade obligations, that they treat importers and domestic processors of timber equally, and that they are not trade distortive.⁶

This was a point reiterated by the Papua New Guinea Forest Industries Association:

The Government of Indonesia has already foreshadowed the possibility that the Bill will not meet WTO requirements and remain challengeable under the WTO. An expert legal opinion by Professor Andrew Mitchell of Melbourne University indicated that the agreement would pose problems with WTO compliance, as well as compliance with the ASEAN-Australia-New Zealand Free Trade Agreement.⁷

In summary Coalition members believe that the Bill and any accompanying draft subordinate legislation need to be subject to the most rigorous consultation process.

Recommendation 1

The Coalition members support recommendations 1 and 2 of the majority sub-committee report.

Recommendation 2

While the Coalition agrees that the Bill, the penalties and the regulations need to be aligned, the Coalition members do not support the timing in recommendation 3 of the majority sub-committee report. The Coalition members recommend that the Bill not be passed until the draft subordinate legislation has been finalised and has been the subject of extensive community and international consultation. In that respect the Bill should not be brought on for second reading debate until the first Parliamentary session of calendar year 2014 at the earliest.

6 High Commission of Canada, Submission 15, p. 2.

7 Papua New Guinea Forest Industries Association, Submission 10, p. 5.

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