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FSC and the Australian Illegal Logging Prohibition Act 2012

On 30 November 2012, the Australian [Illegal Logging Prohibition Act 2012](#) entered into force. It was the result of five years of considerable debate involving both the timber industry (within Australia as well as in the main timber-providing countries) and NGOs.

The official summary of the Act:

- *It prohibits the importation of illegally logged timber and the processing of illegally logged raw logs.*
- *It also requires importers of regulated timber products and processors of raw logs to conduct due diligence in order to reduce the risk that illegally logged timber is imported or processed.*
- *Importers of regulated timber products must provide declarations, at the time of import, to the Customs Minister about the due diligence that they have undertaken.*
- *It provides for inspectors to exercise monitoring, investigation and enforcement powers for the purposes of this Act.*

The Australian Government considers that “*these measures are an essential first step towards a longer-term goal of Australia sourcing timber products from sustainably managed forests, wherever they are in the world.*”¹

One motive for the Act from the side of the Government is that, without such legislation, effective legality policies in the United States (US) and European Union (EU) may lead to Australia becoming an alternative target for illegal timber traders, meaning that Australia’s moral responsibility for the negative impacts of illegal harvesting would increase.

Entry into force

From December 2012, the import of illegal timber and products containing it, and the processing of illegally harvested domestic timber, were forbidden. The law allowed two years for implementing measures to be elaborated. By 30 November 2014, the scope of the import ban was clarified with the publication of a list of regulated products, and a set of requirements and explanations for importers and processors of domestic raw logs on what they need to do to apply due diligence.

However, the current Australian Government, having taken office after the law was passed, has shown it is concerned about the economic impacts of the law. In June 2014, it announced that for the first 18 months after November 2014, the focus would be on “*helping importers and processors to comply with the due diligence requirements*”. And on 1 December 2014, it launched an “*independent review of the impact of the [law] on small business,*” which was submitted to the Government by KPMG on 29 March 2015.

¹ Mr. Kelly, Parliamentary Secretary for Agriculture, Fisheries and Forestry, at the Senate debate, 19 November 2012



Similarities to and differences from the US and EU legislation

The Australian legislators have clearly looked at both the existing legislation in the US (Lacey Act) and EU (Timber Regulation). The key similarities and differences are:

1. All three cover both imported and domestically harvested timber.
2. As in the US, the Australian Act includes exports; be it that it focuses on products containing domestic illegally harvested timber, not on raw logs. (*The EU focus is on “placing on the EU market” only*).
3. As in the US, the Act requires a declaration about timber legality at the point of import of each shipment. (*The EU focus is on “placing on the market”, and no declaration is needed*).
4. As in the EU, the Act describes the essential (similar) features of a due diligence system importers have to apply in order to avoid illegal timber/products. (*The US expects the companies to apply “due care”, without spelling out what that means*).
5. As in the EU, the Act focuses on two groups of companies only, in this case importers and industries processing domestic timber. (*In the US anyone in the supply chain is liable*).
6. As in the EU, the Act foresees implementing regulations that further clarify the duties of related companies.
7. With regards to penalties, the Act sets the same maximum prison standard as the US (5 years), and also sets maximum financial penalties. (*The EU leaves all this to individual Member States*). It also allows for “forfeiture” of the goods, but does not go as far as the Lacey Act, which also allows for forfeiture of the means of transport used.
8. Unlike the US and EU laws, the Act goes into great detail about “monitoring, investigation and enforcement”.
9. Similar to the US, the Act does not foresee officially recognized bodies that can assist in setting up and maintaining due diligence systems. However it can be expected that certification bodies or similar organizations in Australia will offer assistance to companies in setting up and implementing due diligence systems, as a commercial arrangement, rather than through having formal status as monitoring organizations, as in the EU.

Scope

Unlike the US Lacey Act, which covers all kinds of wood products, the Australian implementing regulation (see also below) limits the scope to specific categories of “regulated products”. The list is quite similar to the EUTR and **does not** include charcoal, musical instruments or smaller items. With the EUTR the **main differences** are that the Australian Act does not include fuelwood, railway or tramway sleepers, or packing cases; it includes less paper and paperboard products, but has a more complete inclusion of furniture. (*The EUTR, strangely, excludes seats while including other types of furniture*).



FSC's response to the Australian Illegal Logging Prohibition Act

FSC strongly supports governmental action to ban the trade of illegally harvested timber. Illegal harvest can lead to deforestation, forest degradation, and pollution of water and other resources for forest-dependent communities. It can also include unacceptable working, payment and contractual conditions, and corruption, tax evasion and questionable profit appropriations.

The presence of illegal timber in the market also directly impacts FSC's mission, as it exerts negative pressure on the prices for timber and forest products (estimates are between -7 and -16 percent), undermining the economic viability of investments required for responsible forest management and forest products consumption.

Legality alone is not a guarantee against forest degradation, biodiversity loss or violation of worker and community rights. And national legislation in timber producing countries is not a guarantee of ecologically and socially sound forest management practices, protection of high conservation value forests, or prohibition of natural forest conversion. That is why FSC promotes going beyond legality to pursue FSC certification.

The role of forest certification schemes

The Act foresaw that the implementing regulations will clarify, amongst other things, whether certification schemes can wholly or partly fulfill the due diligence requirements. The Parliamentary Secretary for Agriculture, Fisheries and Forestry expressed a positive intention in the Senate debate: *"...forest certification schemes that can demonstrate that timber products have been harvested in compliance with the applicable laws of the country of harvest may be used, where applicable, as part of an importer's due diligence process."*

For the domestic sector, the Government had no doubts from the start: the final version of the Explanatory Memorandum of the Act states that: *"Voluntary forest certification standards, such as those of the Forest Stewardship Council or Australian Forestry Certification Scheme, can be used to provide an assurance that domestic timber is legally (and sustainably) produced. Under these arrangements, approximately 90 per cent of timber produced in Australia is sourced from certified forests"*.

The situation at the moment

To clarify the modalities for implementation of the Act, so far the Australian Government has published the following documents;

- [Illegal Logging Prohibition Amendment Regulation 2013 \(no. 1\)](#) published on 30 May 2013, presents the imported products that will fall under the scope of the Act in the second phase, and goes into details about due diligence.



- [Department of Agriculture Illegal Logging Position Paper at June 2014](#) which announces the above-mentioned 18-month transition period for the due diligence requirement.
- A growing number of “country-specific guidelines”, produced by the Australian Government and the countries concerned, explaining the national legislation and procedures to be respected. See: www.agriculture.gov.au/forestry/policies/illegal-logging/information-resources
- A set of useful fact sheets, including for processors, importers and exporters to Australia. See: www.daff.gov.au/illegallogging, which includes links to all relevant information.

The implementing regulation confirms that the Government considers three “timber legality frameworks” – **FSC**, PEFC, and EU Forest Legality Enforcement, Governance and Trade Voluntary Partnership Agreements (FLEGT VPAs) – as particularly relevant tools for complying with the Act.

Two of the fact sheets referred to above – one on imports, one on domestic origin – specifically address the use of these frameworks. These factsheets show a clear role for the frameworks as sufficient for risk assessment, but questions remain regarding obligations for information collection. FSC Australia is in discussion with the Government to clarify this further.

FSC’s work to comply fully with the requirements of the EU Timber Regulation, done in 2012 and 2013, will certainly assist in ensuring that FSC certification will also be a reliable tool for Australian importers of timber and products to comply with the Australian Act.

John Hontelez, FSC International, 14 April 2015

Further information:

- about FSC’s role and expectations: Adam Beaumont, Chief Executive Officer FSC Australia, ceo@au.fsc.org
- on the work of FSC on legality in general: <https://ic.fsc.org/timber-legality.492.htm>, or John Hontelez, Chief Advocacy Officer, FSC International: j.hontelez@fsc.org