



Forest&Wood
Products Australia
Knowledge for a sustainable Australia

MARKET ACCESS

PROJECT NUMBER: PNA252-1112

June 2014

Demonstrating legal timber – Due Diligence Tools (Part III)

This report can also be viewed on the FWPA website

www.fwpa.com.au

FWPA Level 4, 10-16 Queen Street,
Melbourne VIC 3000, Australia

T +61 (0)3 9927 3200 F +61 (0)3 9927 3288

E info@fwpa.com.au W www.fwpa.com.au



Demonstrating legal timber – Due Diligence Tools (Part III)

Prepared for

Forest & Wood Products Australia

by

Timber Development Association NSW Ltd

Publication: Demonstrating legal timber – Due Diligence Tools (Part III)

Project No: PNA252-1112

This work is supported by funding provided to Forest and Wood Products Australia by the Australian timber products industry and the Australian Government Department of Agriculture.

© 2014 Forest & Wood Products Australia Limited. All rights reserved.

Whilst all care has been taken to ensure the accuracy of the information contained in this publication, Forest and Wood Products Australia Limited (FWPA) and all persons associated with them as well as any other contributors make no representations or give any warranty regarding the use, suitability, validity, accuracy, completeness, currency or reliability of the information, including any opinion or advice, contained in this publication. To the maximum extent permitted by law, FWPA disclaims all warranties of any kind, whether express or implied, including but not limited to any warranty that the information is up-to-date, complete, true, legally compliant, accurate, non-misleading or suitable.

To the maximum extent permitted by law, FWPA excludes all liability in contract, tort (including negligence), or otherwise for any injury, loss or damage whatsoever (whether direct, indirect, special or consequential) arising out of or in connection with use or reliance on this publication (and any information, opinions or advice therein) and whether caused by any errors, defects, omissions or misrepresentations in this publication. Individual requirements may vary from those discussed in this publication and you are advised to check with State authorities to ensure building compliance as well as make your own professional assessment of the relevant applicable laws and Standards.

The work is copyright and protected under the terms of the Copyright Act 1968 (Cwth). All material may be reproduced in whole or in part, provided that it is not sold or used for commercial benefit and its source (Forest & Wood Products Australia Limited) is acknowledged and the above disclaimer is included. Reproduction or copying for other purposes, which is strictly reserved only for the owner or licensee of copyright under the Copyright Act, is prohibited without the prior written consent of FWPA.

ISBN: 978-1-921763-98-4

Researcher/s:

Stephen Mitchell

Timber Development Association (NSW) Ltd
PO Box 154
St Leonards NSW 1590

Final report received by FWPA in January 2014

Executive Summary

The primary objective of this project is to provide guidance to the timber product importers and domestic processors of raw logs on methods to identify and minimise risk of importing or processing illegally logged timber.

This project was conducted in two stages. Stage I was comprised of two industry surveys to benchmark current practices. The first survey documented the practices of importers of sawn timber, engineered timber and timber veneer. The second survey documented practices of importers of pulp and paper products, wood furniture and secondary manufactured wood products.

The first survey of importers of timber, engineered timber and veneers found a wide range of practices including chain of custody certification. This has increased considerably in comparison to a similar survey done in 2006 by TDA (TDA 2006). A large variety of 3rd party timber legality verification systems were also relied on. One driver for this was identified as the requests for certification and verification by large box retailers and customers after Green Star credits. The second survey found that importers of pulp and paper products had a big reliance on chain of custody certification processes. This was not found with most timber furniture importers who were found to have very basic or no systems in place to review their supply for legal harvesting of the timber components. The reason for this was the lack of drivers for change.

Stage II of the project commenced after the Australian *Illegal Logging Prohibition Amendment Regulation 2013* (Regulation) was registered with the Australian Parliament on 30th May 2013. A range of guidance documents and tools have been produced based on those developed by industry in Europe and the United States to comply with similar regulations on importers and domestic industry in those jurisdictions. The Australian documents were developed in close consultation with Australian timber importers, domestic industry, their industry associations as well as Department of Agriculture staff.

The project outputs include separate guidance documents and tools for importers and for domestic processors. For importers an Australian Industry Timber Due Diligence (AITDD) system was developed. This is a comprehensive suite of specific guidance on setting up and implementing a due diligence system, and includes templates such as company manual, information gathering and risk assessment worksheets as well as a supplier questionnaire. Complementary industry information sheets provide useful plain English overviews and supplementary guidance on aspects of risk assessment and risk mitigation. All the guidance and tools are currently being made available via the web at www.timberduediligence.com.au as well as Forest and Wood Products Australia.

The guidance and tools will all be able to be used by importers and domestic industry to undertake due diligence on applicable timber products and Australian logs in preparation for the commencement of the Regulation on 30th November 2014.

It is recommended that if the Regulation is significantly amended before the commencement date the guidance and tools are reviewed and possibly modified to ensure they are consistent with the amended Regulation.

Table of Contents

Executive Summary.....	ii
Introduction.....	1
Project outline	1
Background	1
Previous research.....	2
Methodology	4
Results & Discussion.....	5
Stage 1: Pre-legislation	5
Stage 2: Post legislation.....	8
Conclusions & Recommendations	15
References	16
Acknowledgements	19
Researcher’s Disclaimer	20
Appendix 1 – Benchmarking Survey Reports.....	21
Appendix 2 – Summary of Guidance and Tools	22

Introduction

Project outline

The overall objective of this project was to provide guidance to the Australian timber industry on an industry agreed method or methods of due diligence to identify and minimise risk of importing illegally logged and traded timber and wood products.

The specific activities undertaken in this project to achieve this objective were:

- A review of timber product importers and domestic processors of raw logs to benchmark their current practices to minimise risk of importing or processing illegally logged timber.
- Provision of technical advice to timber industry representatives providing input to an amendment of the Regulation.
- Development of a method or methods for reviewing purchases for illegally logged wood based on a review of international methods of due diligence or due care.
- Development of guidance and tools to satisfy the amended Regulation.

Background

Illegally logged timber is defined in Australian legislation as timber “harvested in contravention of laws in the place (whether or not in Australia) where the timber was harvested” (*Illegal Logging Prohibition Act 2012* (Cth) s 2). Illegal logging is considered a global problem with significant negative economic, environmental and social impacts (European Commission 2013a).

It is estimated that Australia imports approximately A\$4.4 billion per annum of timber products (excluding furniture) or 0.034 per cent of global production (Explanatory Memorandum, *Illegal Logging Prohibition Bill 2011* (Cth)) so Australia’s role in the trade of illegally logged timber is small in global terms. Despite this there are significant market drivers and incoming legislation which oblige many Australian timber product importers and domestic processes to take measures to reduce the risk of trading in such timber.

Globally a number of jurisdictions have introduced legislation to restrict trade in illegally logged timber. The European Parliament passed the European Union Timber Regulation (EUTR) in October 2010. From 3rd March 2013 the EUTR prohibits the placing on the European Union (EU) market of illegally harvested timber and products derived from such timber. It also requires EU traders (i.e. importers and domestic forestry industry) who place timber products on the EU market for the first time to exercise 'due diligence' to minimise the risk that the timber products have been illegally harvested (European Commission 2013b).

Each EU member state has passed, or is in the process of passing, enabling legislation which sets out substantial civil and criminal penalties for violations of the legislation.

In 2008 the United States (US) Lacey Act, which commenced in 1900, was amended. The Act combats trafficking in “illegal” wildlife, fish, and plants and the 2008 amendment expanded its protection to a broader range of plants and plant products (APHIS 2013). The 2008 amendment makes it unlawful to trade any plant or plant products (e.g., lumber [timber], pulp, paper and wood furniture), with some limited exceptions, taken in violation of the laws of a US State, or any foreign law that protects plants. The Act also requires importers of many wood products to declare the country of origin of harvest and species name of all plants contained in their products.

There are civil and criminal penalties (including up to 5 years jail) as well as forfeiture of goods for violations of the Act. These penalties which vary according to how much the company or individual knew, or ought to have known about any violations and whether they have exercised “due care”. If a person or corporation has practiced due care and is found to have unknowingly engaged in prohibited conduct any penalty is restricted to a low civil penalty and the forfeiture of goods (EIA 2009).

In the US due care means “that degree of care which a reasonably prudent person would exercise under the same or similar circumstances” (APHIS 2013) and is applied differently to different categories of persons with varying degrees of knowledge and responsibility. The first major enforcement action under the Lacey Act was against Gibson Guitar, which was found to have been importing illegally produced and/or exported rosewood from Madagascar. As part of its settlement agreement in 2012 with the authorities (which included paying \$350,000 in penalties, a \$50,000 donation and forfeiting timber to a value of \$261,000), the company agreed to implement a compliance program to minimise the risk of purchasing illegal timber in the future. This program included working with suppliers, collecting information on the sources of the products, looking carefully at documentation and declining to purchase products if there was any doubt over their legality – effectively, a system of ‘due care’ or ‘due diligence’ (Arnold & Porter LLP 2012).

At the time of project commencement the Australian Government was finalising legislation on ensuring timber and timber products placed on the Australian market are from lawfully harvested sources. These EU and USA legislative requirements to exercise due diligence or due care have found their way into this Australian legislation – via the *Illegal Logging Prohibition Act 2012 (Cth)* and the *Illegal Logging Prohibition Amendment Regulation 2013 (Cth)*.

The due diligence requirements will impact on nearly all importers of timber and timber products and nearly all processors of raw Australian forest logs.

Previous research

In 2006 the Timber Development Association (TDA 2006) conducted a review for the Australian Timber Importers Federation (ATIF) of practices employed by Australian timber importers. The review found that many companies already undertook due diligence using in-house developed systems to minimise risk of purchasing illegally logged timber, but lacked the ability to benchmark their activities.

A review of the extensive Australian and international research literature on this subject has found that aspects of due diligence or due care are a key component of industry endeavours in Australia, many major European countries, the United States and Japan. Some of these are solely company initiatives (through procurement policies and practices) or via their trade associations through industry procurement policies and/or Codes of Conduct (e.g. of the Netherlands, UK and French Timber Trade Federations as well as the Quebec Wood Export Bureau). The following Australian and International research were included in a preliminary review:

- TDA (2009) Draft Generic Code of Conduct for the Purchase & Supply of Legally Logged Timber and Wood-based Forest Products,
- Poyry (2010) Legal Forest Products Assurance – A Risk Assessment Framework for Assessing the Legality of Timber and Wood Products Imported into Australia,

- URS Australia (2010) Final Report Legal Forest Products Assurance: A framework for differentiating legality verification and chain of custody schemes,
- Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 Laying Down the Obligations of Operators who Place Timber and Timber Products on the Market,
- Forest Legality Alliance (2010) Frequently Asked Questions about the Lacey Act.

A number of guidance documents and tools have subsequently been developed by European and North American organisations and industry associations including border declarations, supply chain screening and risk identification tools. These guidance documents and tools were used as the basis for the guidance and tools developed in this project and are discussed in the following section.

Methodology

The following methodology was used to achieve the project objectives. The project was split into two stages as certainty in the Regulation was required before Stage II could commence. Additional funding was received to extend the research to cover importers of pulp, paper, wood furniture and a range of other manufactured wood products proposed to be required to exercise due diligence.

Stage 1: Pre-legislation

Part A: Timber and primary timber products

1. Set up project industry advisory group.
2. Survey of fifteen small to large companies across each sector in Queensland, NSW, Victoria and Western and South Australia.
 - i. Report on activities that industry can manage from priority supply regions of the world.
 - ii. Identify what verification methods are currently used, as well as what they propose to use once legislation is enacted.
3. Identify groups to represent primary timber and wood panel sectors in the development of guidelines.

Part B: Pulp, paper, wood furniture and secondary wood products

1. Survey of thirty eight small to large importers across each sector.
 - i. Report on activities that industry can manage from priority supply regions of the world.
 - ii. Identify what verification methods are currently used as well as what they propose to use once legislation is enacted.

Stage 2: Post-legislation

The following methodology was employed for this post-legislation stage of the project:

1. Technical research to inform timber industry input in the development of the subsidiary Regulation of the *Australian Illegal Logging Prohibition Act 2012* and the development of draft guidance and tools.
2. Development of draft guidance and tools based on technical research and requirements of legislation in consultation with industry.
3. Draft guidance and tools circulated for industry comment.
4. Review, consideration and incorporation of substantive industry comment.
5. Finalisation of industry guidance and tools.
6. Publication of guidance and tools.
7. Promotion of guidance and tools.
8. Preparation of project report.

The methodology was modified from that initially proposed as it was found that industry was keen to have the Government propose a range of requirements and that the guidance and tools developed by this project reflect the final Regulation.

Results & Discussion

Stage 1: Pre-legislation

The Stage I survey was split into two parts:

Part A: Timber and primary timber products.

Part B: Pulp, paper, wood furniture and a selection of secondary wood products.

Each of these survey reports is available in their entirety from FWPA. The reports are summarised briefly below.

Part A: Timber and primary timber products

A total of twenty-eight Australian importers/wholesalers and domestic processors of a range of timber and wood products were interviewed. Twenty-one interviews were completed face-to-face and seven by telephone. The wholesalers/importers and domestic processors interviewed supplied the following categories of wood products including Sawn wood, engineered timbers such as LVL and I-beams, sheets of veneer, continuously shaped wood, particleboard, oriented strand board (OSB), medium density fibreboard (MDF) panels, hardboard, plywood, veneered panels and builders joinery such as doors and windows.

Supplies of wood products were sourced from nineteen different regions and countries. 70% of companies interviewed had some form of written policy in regards to sustainability and/or legality of the source of their wood products. This compares with 60% who had written policy in 2006.

Policy status	2006	2012
Published policy	30%	48%
Written policy	30%	22%
Unwritten policy	14%	22%
No policy	26%	8%

The most significant driver for policy was protection of reputation and the values of the company owners. The other major driver was customer's demands. The requirements of customers who are suppliers to projects accredited by Green Building Council of Australia are the most significant driver, and so are the requirements of suppliers to Queensland Government projects. The requirements of major merchant customers such as Bunnings and the recent new major customer for timber products, Masters were also significant drivers for policies and practices in regards to legality. Environment group pressure and the likely introduction of the Illegal Logging Prohibition Bill were the next most significant drivers.

The importers interviewed undertake a large range of formal and informal measures to ensure their wood products meet their stated or unstated policy objectives. All companies interviewed are undertaking components of due diligence in sourcing imported timber. For example information gathering is an activity companies undertake as a normal part of their business. Amongst importers there appears general agreement of what constitutes low risk sources of wood products and what constitutes sources that are not low risk. Importers utilise legality verification mechanisms and documentation that are available to them from their suppliers.

Larger domestic processors interviewed predominately source raw logs from forests and plantations that are certified to either the Forest Stewardship Council (FSC) and/or the

Australian Forest Standards (AFS) Forest Management (FM) Standards. These processors are also predominately Chain of Custody (CoC) certified. A smaller volume of logs are not sourced from FM certified forests but from uncertified private property native forests and plantations. As these processors are CoC certified and supply of these logs from these sources are subject to review of legality under the CoC Standard of the Forest Certification Scheme. Therefore for many of the domestic processors thorough information gathering and review procedures for legality (among other criterion) are already in place and these procedures are verified by 3rd party assessment bodies.

For smaller domestic processors that do not obtain logs from forests certified to either FSC or AFS FM standards, the legislative and regulatory frameworks for log harvesting on public and private land are state or territory-based as are the compliance regimes. In all cases these legal frameworks and compliance regimes are comprehensive and in general the state or territory-based requirements would provide documentation that logs are harvested from legal sources. Any non-compliance is addressed at the state or territory level. If required, these frameworks and the associated documentary evidence would form inputs to a due diligence system if needed to be implemented by domestic processors.

Part B: Pulp, paper, wood furniture and secondary wood products

A total of thirty-eight Australian small, medium and large importers were interviewed. Most are regular importers who import the following categories of wood products; pulp, paper products, wood furniture, wood barrels, wood blinds and shutters and engineered wood flooring.

The number of importers in each of these sectors was not known at time of the survey. To obtain a selection of reasonably representative companies for interview each nominated sector's import data (by value) was obtained from the Australian Government. The value of imports in each wood product categories was analysed and the number of interviews was then equally divided among the categories. With that it is not claimed that this report is representative of practices of all those importing these wood products as interviews were only conducted with those who were willing to be interviewed.

Once requests for interviews commenced it became clear that awareness of the Illegal Logging Prohibition Bill (as it was at that time) varied significantly across all sectors interviewed. Awareness was highest in the pulp and paper sector where seven of nineteen pulp and paper companies interviewed knew of the Bill. Only two of thirteen firms interviewed who were importing wood furniture knew of the Bill.

The importers interviewed undertook a large range of formal and informal measures to ensure their wood products meet their published or internal policy objectives. Most companies interviewed undertake some components of due diligence activity in sourcing imported wood products, for example; information gathering is a normal part of conducting their business.

Pulp and Paper Sector

Within this sector the main driver for sustainable, legally sourced and/or “non-controversial timber” policies and practices is demand by major customers. These major customers want to minimise risk to their corporate reputations and/or brands. As the demand is much wider than proving legality, the main practice employed is Chain of Custody certification to one or both of the internationally recognised standards of the Forest Stewardship Council and/or those endorsed by the Programme for Endorsement of Forest Certification including the Australian Forestry Standard.

Wood Furniture Sector

Interviews with timber furniture importers were very difficult to obtain. There were a number of reasons for this. One of the main ones was the recent activities of the group Markets for Change. This group was actively exposing supply chains to the major timber retailer Harvey Norman and attempting to shame their suppliers for using wood sourced from Tasmanian native forests in their timber furniture. This public attempt at shaming made timber furniture importers, many of which supply Harvey Norman, very reticent to accede to requests for interview on the subject of the legality of the wood used in their furniture. Paradoxically it was found that the strongest drivers for sourcing sustainable and/or legally sourced timber were the requirements of Harvey Norman. Other external drivers were largely nonexistent. The primary internal driver in this sector is company's own values or ethics. The main practices employed by furniture importers are; using single, stable, reputable suppliers and regular visits to their suppliers.

As noted above, most of the furniture importers interviewed had a very low level of knowledge about the Illegal Logging Prohibition legislation and struggled to see how it could apply to them. Many furniture importers' suppliers are also supplying European and US customers. Thus it is very likely that by the time the Australian requirements come into effect in late 2014, most of these suppliers will be familiar with their European Union customers requirements so should be prepared for their Australian customers requirements.

Wood Barrel Sector

The wood barrel wholesalers interviewed either import sawn timber of *Quercus* (Oak) species for the production of barrels in Australia or complete wood barrels made from *Quercus* species directly from France and the United States. Both sources are considered negligible risk of illegal logging by the importer. Their practices include PEFC forest management certification for timber sourced directly from France and the use of in-house timber sourcing experts in the company operations in the United States. These importers have comparatively short supply chain and are sourcing from areas where illegal logging is not prevalent.

Timber Shutter & Blinds and Engineered Timber Flooring

The major importer of timber shutters and blinds interviewed imports finished products from a single supplier in China. The supplier has Chain of Custody to FSC standards for all products supplied to Australia.

The two major importers of engineered wood flooring interviewed principally imported flooring produced in Malaysia with the top layer comprised mainly of *Eucalyptus* species imported into Malaysia from Australia and *Quercus* species imported into Malaysia from the United States. These large companies have Chain of Custody certification for some of their product where there was demand for it.

The one minor importer engineered wood flooring interviewed imported a large range of product produced in China from a huge range of species. The timber is sourced from countries across the South-east Asia and South America regions. Quality control was their key concern and as such they had a staff member embedded with the factory in China to supervise quality. The company was unable to provide any details on policies or practices in regards to legality of harvest of the timber used in the product and were keen for any guidance on how this could be done.

Stage 2: Post legislation

The *Illegal Logging Prohibition Act 2012* was passed by the Australian Parliament in late November 2012 and came into effect on 29 November 2012 (Department of Agriculture 2013). The Act states that specific due diligence requirements for importers of certain timber products - called *regulated timber products* or RTPs - and domestic processors of Australian raw logs will be set out in Regulations which will come into effect on 30 November 2014. With the commencement of the Act the second stage of the project commenced.

Technical research informing guidance and tools

Straight after the Act commenced the Commonwealth Department of Agriculture set up a working party to inform the development of the Regulations. A series of four workshops were held between January and May, 2013. As part of this project TDA provided technical assistance to timber companies and the major timber industry association's representing timber and timber product importers and domestic processors.

Following these workshops on 31 May, 2013 the *Illegal Logging Prohibition Amendment Regulation 2013* was registered as a legislative instrument and submitted to the Australian Parliament. It was only after this time that industry guidance and tools could be prepared with any confidence as no requirements and parameters were known up to that point. As it stands some key aspects of the Regulation are still not finalised. For example, a key component of the compliance with the requirements of the Regulation will be Country and State Specific Guidelines. These Guidelines will be developed by the Australian Government in cooperation with select countries Governments and all the Australian State and Territory Governments.

Feedback from industry stakeholders was that they preferred that the Regulation stipulated what was required of them so it was very clear what they needed to do to comply with the Regulation. This provided a strong level of security to importers so the timber products they import are legally harvested in compliance with the legislation.

Particular weight was given to the documents and associated due diligence system tools of the pan-European due diligence system developed in cooperation between the European Timber Trade Federation (ETTF) and NEPCon with financial support from the United Kingdom's Department for International Development (DFID) (ETTF 2012). Due to this funding by DFID, the ETTF/ NEPCon due diligence system is freely available to those who want to adapt it for their own purposes provided acknowledgement is given of its source.

During this research phase TDA became aware of guidance provided by some organisations that represent exporters of timber products into the European and US markets. Both the Canadian Government (Canada Wood 2013) and American Hardwood Export Council (AHEC 2013) had prepared these proactive resource materials for importers into mainly the EU countries. These resources demonstrate the low risk of illegal logging of timber in these countries – hence making it easier for importers who have to undertake due diligence for timber from those countries. AHEC in particular have done a good range of resources including a peer reviewed study prepared by Seneca Creek (Seneca Creek 2008) which assesses the risk of unlawful harvesting of hardwood in the United States. Such resources are giving US hardwoods a boost in export markets compared to hardwood from perceived higher risk sources.

Feedback from domestic processors was that they wanted absolutely minimal additional workload (preferably none) as a result of the Regulation as Australian logs are very low risk of being illegally harvested. The Australian Government recognises this and has incorporated

within the Regulation State and Territory Specific Guidelines with which domestic processors can use in assessing the risk of sourcing illegal timber under the Regulation. These Guidelines are currently being prepared by the Australian Government together with each State and Territory Government.

As the EUTR also requires domestic entities that distribute or use timber harvested in EU countries to undertake due diligence, the Forest Commission in England was contacted for what advice and tools they provided for their domestic industry. Richard Howe (International Forestry, Standards and Certification Forestry Commission *pers comm.* by email 29 August 2013) provided a guidance document and due diligence tool for their domestic industry (Forestry Commission England 2013a and 2013b).

Draft guidance and tools

Based on the technical research, the requirements of the Regulation and consultation with separate industry guidance documents and tools were prepared for the following key groups:

- Guidance, tools and information for importers.
- Guidance, tools and information for domestic processors.

The draft documents for importers were circulated for industry comment. Comments received on the guidance and tools for importers ranged from very thorough, to the material would need training to be explained in detail on how they would be used. There was also some feedback received second hand that the guidance and tools were overly complicated. DA project staff provided some very specific and substantive comment, mainly on the risk assessment process and the relationship between the guideline document and the templates.

The draft documents for domestic processors were circulated to key local associations who in turn passed them on to their members for comments.

Finalisation of guidance and tools

Guidance and tools for importers

As a consequence of the feedback, the key guidance document for importers was redrafted to simplify the structure and better reflect the straightforward nature of a couple of the compliance/risk assessment methods in the Regulation. There was also a comprehensive reordering of the documents. The final guidance and tools are comprised of documents within an Australian Industry Timber Due Diligence (AITDD) system (see Table 1) and a series of Industry Information sheets.

Table 1: AITDD System document numbers and names

AITDD-01: Due Diligence System Guide
Annex 1: Terms
Annex 2: Template for a company Legal Timber Purchasing Policy
Annex 3: Communications guide
Annex 4: Risk assessment flowcharts
Annex 5: Template letter for suppliers

Annex 6: Information sources
Annex 7: Importer due diligence overview and summary
Annex 8: DRAFT Importer customs broker authorisation
AITDD-02: Company due diligence system manual template
AITDD-03: Supplier and product management spreadsheet for due diligence
AITDD-04: Supplier questionnaire template
AITDD-05: Guidance on evaluating legal conformance at forest harvesting unit level

In addition the following Industry Information sheets were provided on the draft Regulation and various aspects of the due diligence process. These included:

- Importers Overview
- Regulated Timber Products
- Country of Harvest Risk
- CITES, Australia and Timber and Timber Products
- PEFC Endorsed Forest Management and Chain of Custody Standards
- Indonesia TLAS / SVLK & FLEGT / V-legal.

The Australian industry's due diligence (AITDD) system is comprised of the following documents:

AITDD-01: Due Diligence System Guide.

This is a comprehensive guide for setting up and implementing a due diligence system for the import of timber and timber products.

Annex 1: Terms

Additional explanation of some of the key language used in the AITDD documents.

Annex 2: Template for a company Legal Timber Purchasing Policy.

A MS Word template for a purchasing policy for a company to adapt and to commit to only sourcing and purchasing timber products that are legally logged. The final policy can be made public or kept for internal staff training purposes.

Annex 3: Communications Guidelines.

Guidance for company communications to other businesses and to the public. This guideline is assist in reducing the chance of importers breaching Certification organisation rules or Australian Consumer Law when communicating aspects of their due diligence processes.

Annex 4: Risk Assessment Flowcharts

A series of flowcharts setting out in simple diagram form the four different risk assessment methods in the Regulation.

Annex 5: Template letter for a Supplier.

This document is a template of a letter for importers to inform their suppliers due diligence requirements under the Australian legislation and requesting information about the supply of timber and timber products.

Annex 6: Importer due diligence overview and summary.

A template for importers to provide an overview for their due diligence system and summarise their due diligence for particular suppliers and/or regulated timber products.

Annex 7: DRAFT Importer customs broker authorisation.

A DRAFT declaration for importers to complete to authorise their customs broker to answer the required Customs Community Protection Question(s).

Annex 8: Further information sources.

A list of hyperlinks to sources of information on all aspects of due diligence for illegally logged timber as well as “other information” as required in the Regulation.

AITDD-02: Company due diligence system manual template

A MS Word template of a manual for due diligence system for a company. The use of the manual is optional. If it is used it must be adapted and revised by a company as their circumstance demands. The manual includes FAQs for timber merchant customers which must also be adapted before use.

AITDD-03: Supplier and product management spreadsheet for due diligence

A MS Excel spreadsheet template to be used to record the due diligence undertaken for all suppliers of an importer. It includes supplier, product details (including over 5,000 species common and scientific names and their Australian CITES status) and supply chain information, the risk assessments and tracking information.

AITDD-04: Supplier questionnaire template

A MS Word questionnaire template used to collect relevant additional information from suppliers for products which are not certified or legally verified or material where information is lacking.

AITDD-05: Guidance on evaluating legal conformance at forest level.

Guidance on assessing specific risks at the forest harvesting unit (FHU) level and a FHU audit is chosen as a risk mitigating measure, and verifying compliance.

The following industry information sheets were also prepared:

- Importers Overview
- Regulated Timber Products
- Country of Harvest Risk
- CITES, Australia and Timber and Timber Products
- PEFC Endorsed Forest Management and Chain of Custody Standards
- Indonesia TLAS / SVLK & FLEGT / V-legal.

A description of each information sheet and a rationale for each is given below:

Importers Overview

It was clear that the very brief information provided by DoA to importers and customs agents at the information sessions held around Australia did not explain very much. Research was conducted on overview information provided for importers into the European Union industry and an overview document developed.

Regulated Timber Products

It was found that many importers were struggling in the first instance with whether the timber product they import would be covered under the Regulation and thus importers would have to undertake due diligence. This industry information sheet clarified the listings in plain English explaining what is not regulated as well as the products exempt from the Regulation.

Country of Harvest Risk

Assessing the prevalence of illegal logging and/or the risk of wood harvested in a particular country being illegally logged is a key risk criterion. To assist industry guidance a list was prepared on the indicators of risk at a country level including:

- Transparency International's Corruption Perception Index
- NEPCo's FSC Global Forestry Register
- A list of the status countries negotiating Voluntary Partnership Agreements with the European Union as part of the EU's FLEGT (Forest Legality Enforcement Governance and Trade) Program.

CITES, Australia and Timber and Timber Products

While only small volumes of timber imported into Australia are entered via the CITES (Convention on International Trade in Endangered Species) permit process the listing of species in one of the CITES appendices is a key indicator of increased risk of illegal logging. The status of a timber CITES species is included in the templates provided next to the relevant species name (and origin). An information sheet explains the process and the implications of listing which was seen as necessary as the implications of CITES listing are often confused.

PEFC Endorsed Forest Management and Chain of Custody Standards

It was identified that there was a lack of understanding of numerous (>30) PEFC endorsed forest management and chain of custody standards. Even on the PEFC International website it was not evident what standards were endorsed. As PEFC endorsed Forest Management Standards are a method of assessment, an Industry Information sheet on this was prepared in consultation with Australian Forestry Standard to help explain this.

Indonesian TLAS / SVLK & FLEGT / V-legal

Timber product importers from Indonesia are particularly concerned about the impact of the legislation on their imports and what are regarded by the Australian Government as acceptable 3rd party legality verification systems. It is also an area that is riddled with multiple English and Indonesian acronyms making for a very confusing regulatory compliance environment for importers. An industry information sheet on the Indonesian timber legality assurance system (TLAS) mechanism being negotiated and implemented for timber product exports from Indonesia was developed to clarify their status under the Australian legislation for importers as well as customers of importers.

Guidance and tools for domestic processors

The following documents were prepared for domestic processors of raw logs:

- Domestic Processors Overview
- Domestic Processor Due Diligence Summary Template.

A description of each document and a rationale for each is given below:

Domestic Processors Overview

Comments from domestic processors were that the information provided by DA at the information sessions held around Australia were very brief and did not explain very much. To assist in domestic processors understanding an investigation was conducted on information provided to the domestic processors within the European Union. A summary of what was found was developed into an overview document.

Domestic Processor Due Diligence Summary Template

This document is a one page template that can be used by domestic processors of raw logs to summarise their supply and the documentation that the supplier of raw logs has complied with legal rights to harvest.

Comments received on the draft guidance and tools for domestic processors were very positive. A simple overview was all that is required. Space to incorporate supplier forest and/or chain of custody certification codes was requested to be included.

Publication of guidance documents

The final guidance documents and tools are currently being uploaded to the website www.timberduediligence.com.au and will become freely available for download and use by FWPA members and other importers and domestic processors.

A registration process is required before the documents can be downloaded. The registration process and wording was agreed with FWPA and was introduced for the following reasons:

- Those downloading the resources must agree to terms & conditions of use as well as FWPA copyright conditions.
- Those downloading the resources must provide basic contact information so that the users of the resources can be notified if and when they are updated.
- Data can be collected on the specific industry sectors that are downloading the resources so they can be followed up at a later date to gauge applicability and useability of the resources.

Promotion of guidance and tools

Promotion of the resources has commenced with the researcher attending information sessions on the legislation organised by Department of Agriculture in Melbourne, Sydney and Brisbane for importers and domestic processors. All attendees at these sessions were made aware of the documents and where they could be downloaded from once completed. The *Industry Information Sheet: Regulated Timber Products* in particular was in good demand.

Meetings have also been held with members of the Australian Timber Importers Federation (ATIF) and the Queensland Timber Importers Association (QTIA) and the tools have already successfully been used by importers. As a result of these meetings a PowerPoint presentation with case studies was prepared to assist in communicating to importers what due diligence “looks like”. Six case studies for timber products, seven for paper products and three case studies for wood furniture products were prepared. These case studies are all based on real supply chains of importers consulted during the project.

Further promotional activities will occur once the Regulation is passed into law after 5th December 2013.

While the guidance and tools are fairly straight forward some capacity building including training of importers will be needed to be undertaken so that they can fully utilise the documents developed. The Department of Agriculture are planning to undertake industry capacity building and training period in the period March – May 2014. Coinciding training in the use of the tools developed in this project with the due diligence capacity building proposed by Department of Agriculture would be advisable.

Once the final versions of the State Specific Guidelines are available, which are currently being developed by the Australian Government in cooperation with the relevant State and Territory Governments, capacity building and training for this sector may also be needed.

Conclusions & Recommendations

The guidance and tools prepared for importers of timber products (the AITDD system) as part of this project is a comprehensive suite of specific guidance on setting up and implementing a due diligence system. It includes guidance and templates such as company due diligence system manual, worksheets, as well as a suppliers questionnaire. The industry Information sheets provide useful plain English overviews and supporting guidance on due diligence for importers and domestic processors.

The guidance and tools prepared for domestic processors are a basic suite of resources as demands on domestic processors are envisaged to be very low given the low risk nature of the domestic logs being illegally harvested. They are prepared in draft form so that they can be adapted depending on the final State and Territory Specific Guidelines being prepared by the Australian Government.

All the guidelines, tools and information have all been made available via the web at www.timberduediligence.com.au as well as www.fwpa.com.au.

The guidance and tools will all be able to be used by importers and domestic industry to undertake due diligence on applicable timber products and Australian logs in preparation for the commencement of the Regulation on 30th November 2014.

To further assist commercial exploitation of the results of this research project the following recommendations are made:

It is recommended that - if the Illegal Logging Prohibition Regulation is significantly amended before the commencement date - that the guidance and tools prepared in this project are reviewed and modified as necessary to ensure they are consistent with the amended Regulation.

It is recommended that a capacity building program be undertaken - in cooperation with Australian Government - to inform and educate Australian timber importers and domestic processors of methods and tools available and how to use them.

It is recommended that a central resource of information be prepared similar to that provided for the Canadian wood and American hardwood export industries. This will assure overseas customers of the legality and sustainability of Australia's exported forest products, so that importers can easily satisfy their government and market requirements.

References

APHIS (2013) *Lacey Act Primer and Updates*. Animal and Plant Health Inspection Service. Available at www.aphis.usda.gov/plant_health/lacey_act/index.shtml

AHEC (2013) *Demonstrating American Hardwood Conformance to EU Timber Regulation*. American Hardwood Export Council. Available at <http://americanhardwood.org/sustainability/responsible-sourcing/eu-timber-regulation/>

Arnold & Porter LLP (2012) *Advisory: Interpreting The Lacey Act's 'Due Care' Standard after the Settlement of the Gibson Guitar Environmental Enforcement Case* (August 2012). Available at <http://www.arnoldporter.com/publications.cfm?action=advisory&u=InterpretingTheLaceyActsDueCareStandardafterSettlementoftheGibsonGuitarEnvironmentalEnforcementCase&id=915>

Baldwin, E. and Krause, L (2010) *Complying with the Lacey Act: A Real-World Guide*.

British Retail Consortium (2012) *EU Timber Regulation: Overview of a Due Diligence System*.

BSI and WWF-UK Global Forest & Trade Network (2012) *PAS 2021:2012 Exercising due diligence in establishing the legal origin of timber and timber products – Guide to Regulation (EU) No 995/2010*. Available from <http://shop.bsigroup.com/Navigate-by/PAS/PAS-2021/>

Canada Wood (2013) *Risk Assessment and timber and wood-based products from Canada*. Available at <http://www.canadawooduk.org/european-timber-regulation-risk-assessment.php>

Confor (2013) *The EU Timber Regulation and the domestic forestry and wood processing sector: Guidance on the EU Timber Regulation (EUTR)*. Available at <http://www.confor.org.uk/WhatsHappening/Default.aspx?pid=453>

Department of Agriculture (2013) *Illegal Logging*. Available at <http://www.daff.gov.au/forestry/policies/illegal-logging> [accessed 28 October 2013].

EIA (2009) *The U.S. Lacey Act: Frequently Asked Questions*. Environmental Investigation Agency. Available at <http://issuu.com/eia-global/docs/eia.laceyreport.english/1?e=7348194/1879867>

ETTF (2012) *European Timber Trade Federation Due Diligence System*. Prepared by European Timber Trade Federation and NEPCo. Available at www.ettf.info/sites/.../ettf_due-diligence-system-document_dec2012.pdf

European Commission (2013a) *Forests: Illegal logging/FLEGT Action Plan*. Available at http://ec.europa.eu/environment/forests/illegal_logging.htm

European Commission (2013b) *Timber Regulation: Obligations and scope*. Available at http://ec.europa.eu/environment/forests/illegal_logging.htm

EU Regulation (EU) No 995/2010 *of the European Parliament and of the Council of 20 October 2010 Laying Down the Obligations of Operators who Place Timber and Timber*

Products on the Market. Available at
http://ec.europa.eu/environment/forests/timber_regulation.htm

Explanatory Memorandum, Illegal Logging Prohibition Bill 2011 (Cth) Available at
www.austlii.edu.au/au/legis/cth/bill_em/ilpb2012270/memo_0.html

Forest Legality Alliance (2010) *Frequently Asked Questions about the Lacey Act*. Available at
<http://eia-global.org/lacey/>

Forestry Commission England (2013a) *Operations Note 033 EU Timber Regulation (EUTR) 22 August 2013*. Available at
[http://www.forestry.gov.uk/pdf/ON033EUTimberRegulations.pdf/\\$file/ON033EUTimberRegulations.pdf](http://www.forestry.gov.uk/pdf/ON033EUTimberRegulations.pdf/$file/ON033EUTimberRegulations.pdf)

Forestry Commission England (2013b) *EU Timber Regulation: Due Diligence for Timber Grown in Great Britain*. Available at
[http://www.forestry.gov.uk/pdf/EUTRRiskAsstAddendum.pdf/\\$file/EUTRRiskAsstAddendum.pdf](http://www.forestry.gov.uk/pdf/EUTRRiskAsstAddendum.pdf/$file/EUTRRiskAsstAddendum.pdf)

Grant, A. and Beckham, S (2013) *IKEA's response to the Lacey Act: Due care systems for composite materials in China*. World Resources Institute. Available at
<http://www.forestlegality.org/document/ikea%E2%80%99s-response-lacey-act-due-care-systems-composite-materials-china>

Gordon, T. (2013) *Understanding Regulation (EU) 995/2010 of the European Parliament and of the Council: 'The European Union Timber Regulation (EUTR)'* Toby Gordon, Global Product Manager, Forestry Chain of Custody SGS.

Howlett, K. (2013) *Sourcing Legal Timber: Due Diligence Management System*. Presentation by Kip Howlett President, Hardwood Plywood and Veneer Association. Webinar March 29, 2013. Available at
[http://www.namm.org/files_public/Lacey%20Act%20ANSI%20Standard%20PPT%20\(PDF\)_0.pdf](http://www.namm.org/files_public/Lacey%20Act%20ANSI%20Standard%20PPT%20(PDF)_0.pdf)

Illegal Logging Prohibition Act 2012 (Cth)

Illegal Logging Prohibition Act 2012 (Cth) Explanatory Memorandum

Illegal Logging Prohibition Amendment Regulation 2013 (No 1) (Cth) Explanatory Memorandum

Illegal Logging Prohibition Amendment Regulation 2013 (No 1) (Cth) Explanatory Statement

Natural Resources Canada (2013) *Legality and sustainability*. Available at
<http://cfs.nrcan.gc.ca/pages/400>

NEPCon (2013) *The LegalSourceTM Programme for legal timber sourcing*. Available at
http://www.nepcon.net/5022/English/Certification/Timber_Legality_assurance/LegalSource_Programme/

PEFC (2013a) *Meet EUTR Requirements through PEFC Chain of Custody Certification*. Available at <http://www.pefc.org/news-a-media/general-sfm-news/1172->

PEFC (2013b) *Chain of Custody (PEFC ST 2002:2013)*. Programme for Endorsement of Forest Certification. Available at <http://www.pefc.org/standards/chain-of-custody>

Poyry (2010) *Legal Forest Products Assurance – A Risk Assessment Framework for Assessing the Legality of Timber and Wood Products Imported into Australia*. Available at www.daff.gov.au/illegallogging

Seneca Creek (2008) *Assessment of Lawful Harvesting & Sustainability of US Hardwood Exports*. Prepared for American Hardwood Export Council. Available at [http://www.americanhardwood.org/fileadmin/docs/Seneca_Creek_Study/Seneca_Creek_Study - Full Version.pdf](http://www.americanhardwood.org/fileadmin/docs/Seneca_Creek_Study/Seneca_Creek_Study_-_Full_Version.pdf)

TDA (2006) *A Review of the Current Policies & Practices Employed by Timber and Timber Product Importers to Determine the Legality of Supply*. Report prepared for the Australian Timber Importers Federation (ATIF) by Timber Development Association (TDA). Available at www.daff.gov.au/data/assets/pdf_file/0007/37591/procurement_practices_report_june26.pdf

TDA (2009) *Draft Generic Code of Conduct for the Purchase & Supply of Legally Logged Timber and Wood-based Forest Products*. Timber Development Association. Available at www.daff.gov.au/illegallogging

UK TTF (2013) *RPP Product Risk Assessment & Mitigation Guide Updated May 2013*. United Kingdom Timber Trade Federation.

UK TTF (2013) *Due Diligence Manual Template*. United Kingdom Timber Trade Federation.

URS Australia (2010) *Final Report Legal Forest Products Assurance: A framework for differentiating legality verification and chain of custody schemes*. Available at www.daff.gov.au/illegallogging

US Department of Justice (2011) *Criminal Enforcement Agreement – Gibson Guitar Corp*. Available at <http://www.corporatecrimereporter.com/wp-content/uploads/2012/08/gibson.pdf>

Acknowledgements

Thank you to the project steering committee members:

- Gerry Gardiner, Director of Asia Pacific Timber Marketing
- Greg McNulty, Director of Ryan & McNulty
- Germano Tomassetti, National Business Manager of ITI.

Thank you also to the numerous owners and staff of timber, wood product importers, agents and brokers who participated in the survey and answered follow-up questions.

Thank you to the staff of the Australian Department of Agriculture and the staff and members of the following organisations that assisted in the development of guidance material and tools:

- Australian Furniture Association (AFA)
- Australian Forest Products Association (AFPA)
- Australian Industry Working Group on Biosecurity Inc. (AIWGB) (formerly the Industry Working Group on Quarantine or IWGQ)
- Australian Timber Importers Federation (ATIF)
- Customs Brokers and Forwarders Council of Australia Inc. (CBFCA)
- NSW Forest Product Association (NSW FPA)
- Queensland Timber Importers Association (QTIA)
- Timber Veneers Association of Australia (TVAA)
- Victorian Association of Forest Industries (VAFI)

Thank you also to the following particular people who greatly assisted in developing the guidance and tools:

- Gary Hopewell, Principal Scientist at the Queensland Department of Agriculture, Fisheries and Forestry.
- Rachel Butler, Technical Adviser to the European Timber Trade Federation.
- Christian Sloth, Manager of NEPCon and Rainforest Alliance' legality verification programme.
- Anand Punja, Sustainability Manager of the UK Timber Trade Federation.
- Richard Howe, International Forestry, Standards and Certification Forestry Commission.
- Cindy Squires, Executive Director & Ashley Amidon, Manager of Government and Public Affairs for the International Wood Products Association.
- Rod Wiles, Director American Hardwood Export Council - Africa, Middle East, India, Oceania.

Researcher's Disclaimer

Timber Development Association (NSW) Ltd (TDA) makes no warranties or assurances with respect to this publication including merchantability, fitness for purpose or otherwise. TDA and all persons associated with it exclude all liability (including liability for negligence) in relation to any opinion, advice or information contained in this publication or any consequences arising from the use of such opinion, advice or information.

Appendix 1 – Benchmarking Survey Reports

TDA (2012) Report PNA252-1112 - Demonstrating legal wood products: Industry benchmarking. Prepared for Forest and Wood Products Australia.

TDA (2012) Report PNA252-1112 - Demonstrating legal wood products: Industry benchmarking: Part II - pulp & paper, wood furniture and other wood products. Prepared for Forest and Wood Products Australia.

Both reports available at

www.fwpa.com.au/Demonstrating_legal_wood_products_Industry_benchmarking

Appendix 2 – Summary of Guidance and Tools

Available at www.fwpa.com.au/ & www.timberduediligence.com.au

Guidance and tools for importers

Australian Industry Timber Due Diligence (AITDD) for Importers

Document Number and Name	Description
AITDD-01 Due Diligence System Guide	A guide for implementing the AITDD system.
Annex 1 Terms	Explanation of some of the jargon used in these documents
Annex 2 Company legal timber purchasing policy template	A template of a policy for those using this due diligence system to commit the company to sourcing timber products that are legally logged.
Annex 3 Communications guide	Guidance for company communications to other businesses and to the public for those using this due diligence system.
Annex 4 Risk assessment flowcharts	A visual guide to each of the risk assessment methods
Annex 5 Template letter for a Supplier	A template of a letter for importer informing suppliers about your due diligence requirements and asking for information about supply of timber and timber products. The template is necessarily for all suppliers and should only be used where necessary and as described.
Annex 6 Information sources	Additional sources of information on all aspects of due diligence for illegally logged timber
Annex 7 Importer due diligence overview and summary	A template to for importers to overview their due diligence system and summarise their due diligence for particular suppliers and/or regulated timber products.
Annex 8 DRAFT Importer customs broker authorisation	A DRAFT declaration for importers to complete to authorise their customs broker to answer the required Customs Community Protection Question(s)
AITDD-02 Company due diligence system manual template	An MS Word template of a manual for due diligence for a company. The use of the manual is OPTIONAL. If it is used it must be adapted and revised by a company as their circumstance demands.
AITDD-03 Supplier and product due diligence spreadsheet	An MS Excel spreadsheet template to be used to record the due diligence undertaken for all suppliers. It includes supplier, product and supply chain information, the risk assessments and tracking information.
AITDD-04 Supplier questionnaire template	An questionnaire template used to collect relevant <u>additional</u> information from suppliers for products which are not certified or legally verified or material were information is lacking
AITDD-05 Guidance on evaluating legal conformance at a forest level	Guidance on assessed specific risks at the forest harvesting unit (FHU) level and a FHU audit is chosen as a risk mitigating measure.

Industry Information Sheets

- Importers Overview
- Regulated Timber Products
- Country of Harvest Risk
- CITES, Australia and Timber and Timber Products
- PEFC Endorsed Forest Management Standards
- Indonesia TLAS / SVLK / FLEGT and V-Legal

Other documents

- Due diligence for illegally logged timber – Case Studies (PowerPoint Presentation)

Guidance and tools for domestic processors

- Domestic Processors Overview
- Domestic Processor Due Diligence Summary