



Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024 [Provisions]

31 MAY 2024

Submission to the Rural and Regional Affairs and Transport Legislation Committee
behalf of Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association
(APSA)

"KEEPING AUSTRALIA'S INTERNATIONAL TRADE MOVING"



Australian Peak Shippers
Association Inc. (APSA)

ABOUT THE ALLIANCE

Freight & Trade Alliance (FTA) is the peak body for the international trade sector with a vision to establish a global benchmark of efficiency in Australian biosecurity, border related security, compliance, and logistics activities.

FTA represents more than 500 businesses including Australia's leading customs brokerages, freight forwarders and major importers.

On 1 January 2017, FTA was appointed the Secretariat role for the Australian Peak Shippers Association (APSA). APSA is the peak body for Australia's containerised exporters and importers under *Part X of the Competition and Consumer Act 2010* as designated by the Federal Minister of Infrastructure and Transport.

APSA is also a member and has board representation on the Global Shippers Forum (GSF) that represents shippers' interests and that of their national and regional organisations in Asia, Europe, North and South America, Africa and Australasia.

A list of all members and further information about FTA / APSA is available at www.FTAlliance.com.au

Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) represent leading import and export businesses including world class manufacturers and producers, supported by skilled customs brokers and freight forwarders.

On 16 May 2024, the Senate referred the Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024 [Provisions] to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 20 June 2024.

FTA / APSA are pleased to present this submission in response to the committee's invitation to address the provisions of the bill, which aims to fortify the existing Illegal Logging Prohibition Act 2012. The amendments proposed in this bill are crucial for enhancing Australia's ability to prevent the importation and processing of illegally logged timber, thereby protecting the world's forests, and ensuring sustainable timber trade practices.

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Response to Proposal: Enable testing of timber products at the Australian border and beyond to ensure non-compliant, illegally logged timber is not imported.

The proposed provision to enable testing of timber products at the Australian border and beyond is reminiscent of the current regime for asbestos testing, where the Australian Border Force (ABF) selects shipments for testing by a National Association of Testing Authorities (NATA)-approved laboratory. This scheme is crucial due to the dangers of asbestos, and ensures that goods are held at the border until testing is completed and results are verified.

However, this approach has sometimes led to significant financial penalties and/or delivery delays for importers due to a shortage of approved testing resources.

Based on this experience, FTA / APSA suggest that timber testing be performed post-border. Specifically, we recommend that the relevant Federal Government regulator approach importers directly for testing. This can be initially coordinated via customs brokers to ensure importers are aware of the requirement to hold a portion of the consignment for testing. This method would allow goods to continue moving through the supply chain without incurring substantial border-related charges.

Response to Proposal: Introduce a requirement for importers and processors to give notice before importing or processing regulated timber products;

FTA / APSA see merit in a requirement for importers and processors to give notice before importing or processing regulated timber products. Compliant importers already possess the necessary information and are generally willing to share it to ensure transparency and adherence to regulations.

However, we have concerns about the capacity of the relevant regulator to handle this information. Assuming the Department of Agriculture, Fisheries and Forestry (DAFF) is likely to be the designated regulator, we refer to the Australian Public Service Commission Capability Review into DAFF, which highlighted the need to *modernise legacy ICT assets to achieve contemporary operational capability*.¹

Therefore, it is crucial that the method of information submission aligns with how industry stores and transmits data. We strongly recommend developing solutions that allow importers and customs brokers to transmit data directly from their preferred platforms, such as SAP and CargoWise, rather than relying on manual solutions involving Word or Adobe formats.

¹ Page 40 | Capability Review Report – Department of Agriculture, Fisheries and Forestry - Australian Public Service Commission

Response to Proposal: Add strict liability offences, injunctions and enforceable undertakings to enforcement powers; enable audits to be carried out to determine compliance with the due diligence requirements.

Clarity is needed regarding the enforcement of strict liability offences. As the majority of customs brokers have an Approved Arrangement with DAFF, there might be a temptation to direct enforcement measures against this group. However, customs brokers should not be the primary target for enforcement actions as long as they have completed the necessary due diligence. Given the volume of consignments handled, it is impractical for customs brokers to perform due diligence on a shipment-by-shipment basis.

FTA/APSA recommend that customs brokers be allowed to perform due diligence once, with a continuous disclosure requirement placed on importers to notify customs brokers of any changes. This approach ensures that the responsibility for compliance remains appropriately distributed and manageable, preventing undue burden on customs brokers while ensuring that importers remain accountable for the timber they introduce into the supply chain.

FTA / APSA also recommend that there be clear guidelines on what constitutes due diligence so that importers and customs brokers understand what is required to meet these standards.

Response to Proposal: Extension of Time Frame for Issuing Infringement Notices and Publication of Contraventions

FTA/APSA recommend that the time frame for issuing infringement notices be limited to one year from the detection of the offence. This period strikes a balance between providing sufficient time for thorough investigations and ensuring that importers and customs brokers have the necessary certainty to move forward from a breach. A shorter time frame also encourages authorities to conduct their investigations efficiently and expeditiously.

Regarding the publication of details of contraventions, FTA / APSA propose that DAFF refrain from publishing the names of companies that have received infringement notices. An infringement notice does not constitute an admission of liability, and there are instances where companies may choose to pay the notice to avoid the higher costs associated with disputing the matter in court.

Should DAFF wish to make the details of enforcement actions public, this can be appropriately handled through the court system, where due process is observed, and all relevant facts are considered. Alternatively, DAFF could publish general information about the issuance of infringement notices without disclosing the identities of the companies involved. This approach would maintain transparency and deterrence while protecting the reputations of businesses that may have opted to settle notices for pragmatic reasons rather than as an acknowledgment of wrongdoing.

Conclusion and Recommendations

In preparing this submission, FTA / APSA has engaged extensively with the Simplified Targeting and Enhanced Processing System (STEPS) and the Illegal Logging teams at DAFF, in addition to a diverse range of members. Additionally, as a member of the Department of Agriculture, Fisheries and Forestry Cargo Consultative Committee (DCCC), FTA / APSA successfully advocated for the inclusion of the following action item: *“Convene a discussion on the current legislative framework for compliance with illegal logging, the challenges faced by the industry, and potential solutions.”*

Regarding the responsibilities of customs brokers, FTA / APSA firmly believes that they should not be held accountable for matters related to illegal logging. The primary role of customs brokers is to assess commodities for Customs Tariff purposes and to identify potential interventions by DAFF. Imposing the responsibility for ensuring compliance with illegal logging regulations on customs brokers introduces unnecessary burdens that fall outside their area of expertise and primary functions.

Adding more compliance measures for customs brokers will only exacerbate the already substantial regulatory and legislative demands they must adhere to. Many of these compliance tasks could and should be managed post-importation. DAFF has the capability to identify importers of timber-related products. FTA / APSA recommends DAFF focus on developing a post-border compliance regime.

In conclusion, FTA / APSA urges a reconsideration of the role of customs brokers in the compliance framework for illegal logging. By reallocating these responsibilities to more appropriate industry participants and developing a robust post-border compliance regime, more effective and efficient management of illegal logging issues can be ensured. FTA / APSA looks forward to continuing its collaboration with DAFF and other stakeholders to achieve these goals and to address the challenges facing the industry.