



Due diligence – Guidance for importers

FACTSHEET 2.1



Under the illegal logging laws, businesses importing regulated timber products into Australia will have to carry out due diligence on these products before import. The Regulation, which details the due diligence requirements, comes into effect on 30 November 2014.

See *Factsheet 2.4 – What timber products are regulated?* for guidance on what timber products are regulated.

The due diligence requirements have been designed to be flexible and not too onerous, so that each importer can use the tools and skills they have available to identify, assess and (if required) mitigate risks of illegally logged timber being imported into Australia.

The due diligence requirements can be summarised as a four step process:

Step 1 – Gather information

If you are an importer you must obtain information about the timber or timber product you intend to import where this information is ‘reasonably practicable’ to obtain. The information gathered needs to be sufficient for you to do your risk assessment.

The type of information you might need is outlined in the Regulation, and depending on your circumstances, may for example include:

- the product type or trade name
- the common name or scientific name of the tree from which the timber is derived
- the country of harvest or the region within the country
- documentation provided by the supplier
- evidence that the timber in the product was legally harvested (i.e. that it has not been illegally logged).

For many of you, some of this information is gathered in the usual course of business to ensure product quality and quantity as a part of the sale/supply contract and/or to meet information requirements for other Australian Government authorities such as Customs Border and Protection. For others, new systems may need to be established to collect this information.

How you gather information is up to you. The due diligence requirements have been designed to be flexible to allow for existing commercial business practices. For example, you can gather information by letters, emails, site visits, websites or phone calls. Whatever information is gathered must be recorded in writing (on a computer is ok).

What does ‘reasonably practicable’ mean?

The term reasonably practicable is a common legal term used in other Australian legislation such as Work Health and Safety. It means what a reasonable person would have done in the particular circumstances. In this case it refers to an importer.

For businesses importing into Australia what is reasonably practicable will depend on the individual circumstances of the importer. There are a number of factors that should be considered when gathering information such as:

- the availability of the prescribed information
- the time, expense and difficulty involved in obtaining information
- the steps required to gather the necessary information.

Each factor is as important as the others, and should all be taken equally into consideration. You will need to balance the likelihood that the timber product you are proposing to import has been illegally logged against the time, cost and resources required to gather the information needed to justify a conclusion that the risk is low.

This should not be an onerous process—businesses may be able to use existing systems, practices and processes to gather the information to allow them to assess the risk that it is illegally logged.

The Act and Regulation recognise there are a range of circumstances that may make it difficult, or impossible, to gather each element of the required information. You should be able to show that you have made reasonable efforts in seeking to obtain the information.

Step 2 – Use of Timber Legality Framework or Country Specific Guideline (optional step in due diligence requirements)

The Australian Government has included an optional step to give businesses a number of pre-tested processes that, if adhered to, demonstrably minimise the risk of the regulated timber of being illegally logged.

For further information on the optional process see *Factsheet 2.2 - Use of Country Specific Guidelines* or *Factsheet 2.3 - Use of Timber Legality Frameworks*.

If you can assure yourself that the timber is **low risk** of being illegally logged by using any of the applicable Timber Legality Frameworks or Country Specific Guidelines, you can continue with the import without undertaking any further due diligence steps.

What does 'low risk' mean?

Low risk refers to you being satisfied, with sufficient justification from the information you have obtained that the likelihood of a timber product being illegally logged is low.

Step 3 – Undertake a risk assessment

Where you have not used Step 2, or where you have used Step 2 but could not identify the regulated product as being low risk, you must undertake a risk assessment.

You must identify and assess the level of risk by considering the relevant factors:

The prevalence of illegal harvesting in the area in which the timber was harvested

You must consider information about how common the incidence of illegal harvesting of timber is in the areas the timber is sourced from.

Areas that have strict regulatory requirements and strong enforcement have low rates of illegal logging. By comparison, some areas may have poor governance arrangements and illegal logging could be more common.

Market knowledge, non-government organisations, industry networks, your own industry knowledge, questions to suppliers, internet searches or the media may be some of the tools useful in gathering information to assist in considering this factor.

The prevalence of illegal harvesting of the tree species from which the product is derived

Illegal logging of certain tree species may be more prevalent due to their high value, special qualities or rareness. Low value timber species may experience lower levels of illegal logging.

You should consider information about how common illegal logging is for the timber species of or within the product. Market knowledge, non-government organisations, industry networks, your own industry knowledge, questions to suppliers, internet searches or the media may be some of the tools useful in gathering information about illegal harvesting of a particular tree species.

The prevalence of armed conflict in the area where the timber was harvested

There is a well established link between armed conflict and the incidence of illegal logging. Areas of armed conflict may make it difficult for the relevant authorities to control forest resources and to ensure legal management of timber extraction from such areas. If armed conflict is occurring in an area, you should be aware of the possibility that elevated occurrences of timber being illegally logged and factor this into your risk assessment considerations.

The complexity of the product

Some products have long, complex supply chains and/or use numerous timbers and/or multiple sources in the one product (for example some plywood or MDF, many paper products and wood furniture comprised of composite wood materials). If you import these products, it may be more difficult to obtain certain information, or the product may be processed to a point where you cannot identify each timber species or the scope of species used is unknown. As global efforts on illegal logging continue, more information may be available for complex products and complex supply chains, which will allow opportunities to gather more information into the future.

By contrast, if the timber or timber product is a raw product, and the product and supply chain is relatively simple, it may be easier to gather the required information to assign a low rating to this factor.



In either case, keep in mind that you are only required to gather as much information to undertake a risk assessment as is reasonably practicable. You should have consideration for how much information you have been able to gather and whether it is sufficient to make an informed decision.

Any other information known, or should reasonably be known, by an importer.

In assessing risk, you can use information from a range of sources. Some sources can assist you to conclude a low rating. For example, information gained through a long and honest business relationship, robust certification or independent checks on the supply chain or your knowledge of the legitimacy of the supply chain.

Some sources may alert you to the need for further fact checking and examination. If you have reason to doubt the information gathered (such as an obvious problem with the validity of a document or the legality of the process by which the documents are obtained) you may need to undertake further research and assessment to satisfy yourself of a product's low rating for this factor.

Step 4 – Risk mitigation

Where you have, after the risk assessment in Step 3, identified that there is a risk that the timber was illegally logged and the risk is not low, you must undertake a risk mitigation process in accordance with the Regulation. If the risk is found to be low after Step 3, there is no requirement to undertake this risk mitigation step.

Any mitigation action may be used. The Regulation only requires the mitigation adopted by you to be adequate and proportionate to the assessed level of risk.

To mitigate risks, you may, for example, choose to ask the exporter for additional evidence of the products legality. Where there remains a serious risk you may choose not to import.

Questions?

Visit the department's website at daff.gov.au/illegallogging. You can also contact us by emailing: illegallogging@agriculture.gov.au or calling us on 1800 657 313.

THE DUE DILIGENCE PROCESS



Keep a written record of your due diligence process

