

Export Control (Hardwood Wood Chips) Amendment Regulations 1999 (No. 3) 1999 No. 328

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 328

Issued by the Authority of the Minister for Forestry and Conservation

Export Control Act 1982

Export Control (Hardwood Wood Chips) Amendment Regulations 1999 (No. 3)

The Export Control Act 1982 (the Act) commenced in 1982 in order to provide for the control of the export of certain prescribed goods.

Section 25 of the Act provides that the Governor-General may make regulations for the purpose of the Act. The Export Control (Unprocessed Wood) Regulations, the Export Control (Hardwood Wood Chips) Regulations 1996 (the '1996 Regulations'), and the Export Control (Regional Forest Agreements) Regulations (the 'RFA Regulations') provide necessary support to the Act by prescribing export licensing arrangements for unprocessed wood and woodchips.

The purpose of the Regulations is to ensure that existing Australian exporters of native hardwood wood chips are able to continue to compete on the export market until the RFA process is completed (that is, by 31 March 2000).

The 1996 Regulations provide in part that, subject to an annual aggregate national ceiling, the Minister may grant applications for transitional export licences for a region where no RFA is in place. On the basis that all RFAs originally were scheduled to be completed by 31 December 1999, the 1996 Regulations prohibit the Minister from granting such licences if an application is made in relation to a period that begins on or after 1 January 2000.

The RFA Regulations effectively remove such export licensing controls on unprocessed wood and woodchips derived from a specified region when an RFA comes into force for that region (except for plantation-sourced material, where export controls are being lifted on a State-by-State basis under the Unprocessed Wood Regulations).

Under the RFA process, the Commonwealth and relevant State Governments are committed to reaching agreement on the long-term management of native forests in a specified region which will: protect environmental and other values in a world class reserve system; give forest industries a firm base to create jobs and business opportunities; and ensure the forest estate is managed sustainably for future generations.

To date, RFAs have been completed for 6 regions (the East Gippsland, Central Highlands and North East Regions in Victoria, the Tasmania Region, the South West Forest Region in Western Australia, and the Eden Region in New South Wales). Export controls have, therefore, been lifted from these regions.

RFAs have yet to be completed for a further 6 regions (the Gippsland and West Regions in Victoria, the Upper North East, Lower North East and Southern Regions in New South Wales, and the South East Queensland Region). While the RFA process in each of these regions is close to completion, it is possible that, for a number of reasons, they will not all be finalised by 31 December 1999.

The problem arises that if an RFA for a particular region is not completed by that date, exports of native hardwood woodchips will be prohibited from that region under the 1996 Regulations. Such prohibition would immediately affect persons who are currently exporting under licence from the Gippsland and West Regions in Victoria and the Upper North East, Lower North East and Southern Regions in New South Wales. (There would be no immediate impact on the South East Queensland Region as there are currently no export licences in force for that Region.)

The Government is firmly of the view that the integrity of the RFA process is paramount, so the parties should not be rushed simply to meet the deadline. Similarly, enforcing the 31 December 1999 deadline for current woodchip exports will in no way advance the finalisation of the unfinished RFAs, even though they are now close to completion. Rather, it would lead to severe disruption of the native timber industry in the regions concerned.

A Regulation Impact Statement is attached.

Details of the Regulations are also attached.

The Regulations commence on 31 December 1999.

ATTACHMENT

Regulation 1 provides that the name of these Regulations is the *Export Control (Hardwood Wood Chips) Amendment Regulations 1999 (No. 3)*.

Regulation 2 provides that these Regulations commence on 31 December 1999.

Regulation 3 provides that the 1996 Regulations are amended as set out in Schedule 1 of these Regulations.

Schedule 1, Item [1] amends paragraphs (a) and (b) of Regulation 2 (Purpose of these Regulations) by extending the date:

(a) from which the export of native hardwood wood chips is prohibited unless those wood chips are derived from a region for which an RFA is in force; and

(b) until which transitional licences issued for regions for which RFAs are not in force remain subject to a national aggregate ceiling;

from 1 January 2000 to 1 April 2000.

Schedule 1, Item [2] amends Regulation 10 (Authorised export mass for licences) by inserting Subregulation (5), which inserts a formula limiting the mass able to be exported under a transitional licence that remains in force for the three months between 1 January 2000 and 31 March 2000. The formula, which is designed to maintain the integrity of the national aggregate ceiling described under Subregulation 10 (2), applies an export limit of..

(a) in the case of controlled wood chips classified as "whether residue or otherwise", one third of the

annual mass allowed to be exported under the transitional licence, or 10,000

green tonnes, which ever is greater; and

(b) in the case of controlled wood chips classified as "residue", one third of the annual mass allowed

to be exported under the transitional licence.

[Subregulation 10 (2) imposes a maximum aggregate mass of wood chips that the Minister may authorise for export under all transitional licences in force in any year. Currently, that annual ceiling is 6.251 million green tonnes. This comprises 5.251 million green tonnes of the category of "whether residue or otherwise" wood chips and 1 million green tonnes of the category of "residue" wood chips. Residue wood chips are defined in the 1996 Regulations as "controlled wood chips derived from sawmill residues or silvicultural thinnings".]

A figure of one third (rather than a pro-rata one quarter) of the annual authorised mass takes into account seasonal and logistical factors that may affect the mass of wood chips able to be exported over the threemonth period 1 January 2000 to 31 March 2000.

A minimum of 10,000 green tonnes for licences which authorise the export of the "whether residue or otherwise" category of wood chips ensures that an economic shipment of exports can be made under such licences. For example, under this category, there are four transitional

licences currently in force that provide for an annual limit of between 10,000 and 3 0,000 green tonnes. Applying a strict 'one third' formula to such licences could limit the licence holder to a mass that is uneconomic to export.

Schedule 1, Items [3] and [4] amend Regulation 11 (Period in which transitional licence is in effect) by inserting Subregulations (2A) and (2B), which extend the term of a transitional licence to 31 March 2000, provided the transitional licence is in force on 31 December 1999 for a region, or part of a region, that on that date is not subject to an RFA. At present, there are only 6 transitional licences in Victoria and 3 in New South Wales that would meet these conditions.

Schedule 1, Items [5] and [6] amend Regulation 12 (Conditions or restrictions specified in a transitional licence) by inserting Subregulations (2), (3), (4) and (5), which respectively:

(2) & (3) clarifies that, for any transitional licence whose period of operation is extended beyond 31 December 1999 and which authorises the export of controlled wood chips derived from within New South Wales or Victoria, a reference in that licence to the "Deferred Forest Agreement" or the "Interim Forest Agreement" is a reference to that agreement as in force on 31 December 1999.

[All Transitional licences granted under the 1996 Regulations contain conditions which prohibit the export of wood chips sourced from wood harvested in an area that may be required for a future comprehensive, adequate and representative forest reserve system for the region. Such areas are specified in agreements entered into between the Commonwealth and the relevant States at the beginning of the RFA process. In both New South Wales and Victoria these agreements (the 'Deferred Forest Agreement' and the 'Interim Forest Agreement' respectively) are due to expire at end-31 December 1999. While arrangements were being made by the parties to extend those agreements to 31 March 2000, at the time of the making of these Regulations, no such extensions had been finalised. These amendments ensure that a holder of an extended licence will not be able to export from prohibited areas specified in the relevant extended agreement or, if the agreement is not extended, from prohibited areas specified in the relevant agreement in force on 31 December 1999.]

(4) makes appropriate amendments to the reporting requirements contained in a transitional licence in force after 31 December 1999, so that the licence holder must report on compliance with licence conditions to the Department within 3 months of the conclusion of the extended period.

(5) exempts a transitional licence in force after 31 December 1999 from payment of a monitoring fee for the period it is in force.

[All transitional licences contain a condition requiring the exporter to pay a monitoring fee determined in accordance with the Export Control (Hardwood Woodchips) (Monitoring Fee) Order No. HW1. This fee covers the cost of monitoring the exporter's compliance with conditions of the licence by the Woodchip Export Monitoring Unit ('WEMU') of the Department of Agriculture, Fisheries and Forestry - Australia. While WEMU will continue to monitor such compliance during the extension period, it already has sufficient funds for this purpose raised from monitoring fees collected in previous years.]

Schedule 1, Item [7] amends the description of the boundary for the Gippsland Region of Victoria contained in Schedule 1, clause 2, paragraph (c) of the 1996 Regulations. This amendment reflects a minor adjustment to the Gippsland Region boundary, as agreed to by the Commonwealth and the State of Victoria.

REGULATION IMPACT STATEMENT

Introduction

Over the years, governments have faced the task of balancing competing interests of environment/conservation, industry and recreation regarding the use, management and conservation of native forests and native forest resources.

A major part of the Commonwealth's response during this time has been the use of export controls under the Export Control Act 1982 on unprocessed wood and woodchips sourced from both native forests and plantations. In more recent times, the Commonwealth has focused on limiting the export of woodchips sourced from native forests as a somewhat ineffective and anti-competitive means of ensuring sustainable management of that resource.

However, the National Forest Policy Statement 1992, supported on a bi-partisan basis, has provided a framework for a progressive, long-term and lasting resolution of conservation, forest industry and community interests and expectations concerning Australian forests; something export controls could never achieve.

The Statement requires joint Commonwealth-State comprehensive regional assessments of forests' environmental, heritage, economic and social values. These assessments then form the basis of negotiated Regional Forest Agreements (RFAs) between the Commonwealth and the States, which provide for future forest management and the basis of an internationally competitive and ecologically sustainable forest products industry.

RFAs therefore provide for a comprehensive, adequate and representative forest reserve system to apply in each region, while also clearly identifying those forest resources available for multiple use (including resources for sustainable timber harvesting, whether directed to domestic or overseas consumption). Consequently, once RFAs are in place, there is no need for export controls to apply.

1. The Problem

In 1996, the Export Control (Hardwood Wood Chips) Regulations (the '1996 Regulations') were made to, in part, provide for transitional licence arrangements to apply to the export of native hardwood woodchips until the RFA process is completed for the regions from which such exports were being sourced. On the basis that all RFAs were originally scheduled to be completed by 31 December 1999, the 1996 Regulations prohibit the export of such woodchips on or after 1 January 2000, unless they are sourced from a region for which an RFA is in force.

Further, in 1997, the Export Control (Regional Forest Agreements) Regulations (the 'RFA Regulations') were made to provide, in part, for the removal of export controls on unprocessed wood and woodchips from native forests while ever an RFA is in force for a region.

To date, RFAs have been completed for 6 regions (the East Gippsland, Central Highlands and North East Regions in Victoria, the Tasmania Region, the South West Forest Region in Western Australia, and the Eden Region in New South Wales).

RFAs have yet to be completed for a further 6 regions (the Gippsland and West Regions in Victoria, the Upper North East, Lower North East and Southern Regions in New South Wales, and the South East Queensland Region). While the RFA process in each of these regions is close to completion, it is possible that they will not all be finalised by 31 December 1999.

The problem arises that if an RFA for a particular region is not completed by that date, exports of native hardwood woodchips will be prohibited from that region under the 1996 Regulations. Where an RFA is in place, however, no export controls apply.

The Government is firmly of the view that the integrity of RFAs is paramount, so they should not be rushed simply to meet the deadline. Similarly, enforcing the 31 December 1999 deadline for current woodchip exports will in no way advance the finalisation of the unfinished RFAs, even though they are now close to completion.

2. Objectives of Government Action

The Government seeks to ensure both the finalisation of the R-FA process and the continued ability of Australian companies to compete on the export market while that process is being completed.

3. The Options.

(i) Continue the RFA process but prohibit exports in individual regions until RFAs are completed.

(ii) Continue the RFA process and extend transitional export licences current as at 31 December 1999 for a short period (to 31 March 2000) to allow the process to be concluded.

(iii) Terminate the RFA process and re-introduce export licence controls or develop selfregulatory or industry-government arrangements.

4. Assessment of Impacts

Option (i)

(a) Groups Affected.

Companies currently permitted to export under licence would be directly affected, with a flow-on effect on forest owners, sawmillers, harvesting and trucking contractors whose businesses depend to some degree on the activities of such export companies.

(b) Costs and Benefits of the Proposed Option

This Option has the benefit of allowing the RFA process to be completed in full, thereby ensuring community confidence in the outcomes obtained. It may also encourage early finalisation of any unfinished RFAs, given that exports would be prohibited in the meantime.

However, RFAs are agreements between the Commonwealth and the relevant State Governments only. Therefore, it would be improper to adversely affect the business of third parties who are not able to influence in any material way the time taken to conclude such agreements.

It is difficult to assess the cost to exporters if exports are prohibited from 31 December 1999 until respective RFAs are concluded. However, if no further RFAs are concluded before 31 December 1999, the mass of woodchips authorised to be exported under transitional licences in non-RFA regions at that date would total 957,000 green tonnes. Assuming it will take an average of two months to complete each RFA and assuming the exporter would have exported at a level consistent with that authorised under the licence over that period, it is estimated that \$12.75

million dollars of woodchip exports would be foregone if those transitional licence holders were prohibited from exporting during that period.

Also, while it is expected that there will only be a short period of time after 31 December 1999 before all REAs are signed, a prohibition on exports would likely have a much greater negative impact on the competitiveness of current export licence holders and domestic activity in Australia. This is because:

- * long lead times are needed between harvesting and export, so that the prospect of there being no exports allowed after 31 December 1999 will affect business activity well before that date;
- * any disruption to supply, even for a short period of time, will likely have longer-term adverse effects on export contracts as overseas customers are particularly sensitive to any discontinuity in supply; and
- * there could be substantial flow-on effects on sawmillers and harvesting and trucking contractors.

Option (ii)

(a) Groups Affected.

It is considered that no clearly identifiable group will be adversely affected by this Option as it retains the status quo until the RFA process is finalised for all regions. However, it is possible, though unlikely given the short time period involved, that a company or two now considering entry into the woodchip export market may need to delay such action until an RFA is completed for a particular region.

(b) Costs and Benefits of the Proposed Option

Apart from a potential deferment of some economic benefit to companies not yet engaged in the woodchip export market, this Option would overcome the deficiency associated with Option (i) in that there would be no cost to existing exporters if, as a result of factors beyond their control, RFAs were not concluded by 31 December 1999.

This Option also enjoys the same benefit as Option (i) in that it allows the RFA process to be completed in full, thereby ensuring community confidence in the outcomes obtained.

Option (iii)

(a) Groups Affected.

Groups adversely affected by the termination of the RFA process would include conservation and environmental interests (given their great interest in the sustainable management of native forest resources), State Governments (who have Constitutional control over land use and are major industry players in their own right), private industry and the broader community (who have an interest in the native forest estate generally and in State Government forest holdings and activities). The RFA process has allowed all groups to have a significant input into the final outcome for each region.

Re-introduction of export licence controls would particularly affect companies wishing to export that are not able to obtain such licences.

(b) Costs and Benefits of the Proposed Option

There are obvious costs associated with the application of export licence controls that reduce the ability of companies to compete freely in international markets. While there might be short-term benefits to industry in developing separate self-regulatory or industry-government agreements, in the medium to longer-term, however, strong public interest concern will likely undermine any stability of supply or access to export markets.

This is particularly so if the RFA process, based on rigorous scientific assessments and extensive consultation, is terminated. As in the past, there will likely be strong pressure on both State and Commonwealth Governments to impose ad-hoc and anti-competitive restrictions on access to native forests and/or exports of same while ever such concern about environmentally sustainable forest management exists.

5. Consultation

On-going consultation with governments and all sectors of the community has been a fundamental feature of the RFA process, which will continue under the proposed regulations.

In relation to the proposed amendments themselves, consultation has occurred with export licence holders, the National Association of Forest Industries, relevant State Governments and the Opposition. There is general consensus in support for the proposed amendments should the RFA process not be completed for all regions, given the advanced state of RFA assessments and negotiations under way for remaining regions.

6. Conclusion and Recommended Option

Option (H) has been accepted as the preferred option, given that:

- * unlike *Option (iii)*, it allows the RFA process to be concluded in full, thereby ensuring that the strong public interest in this issue is accommodated;
- * the short extension of time to 31 March 2000 encourages the Commonwealth and States to retain their commitment to finalising the RFA process as expeditiously as possible;
- * unlike *Option (i)*, it ensures that the industry currently engaged in the native woodchip export sector is not adversely affected by delays in the RFA process over which it has no control;
- * it is the simplest and least disruptive option in that it maintains the status quo for a short period of time;
- * while there may be some small impact on potential entrants to the export market during that short period of time, it will help ensure that, once the RFA process is completed, Australian companies will be able to compete freely in domestic and international markets, secure in the knowledge that continuity of sustainable supply will be forthcoming as a result of the RFA process.

Implementation and Review Strategy

The regulation is self-contained and largely provides for its own implementation. For example:

* it is restricted in its sphere of operation in that only transitional licences in force as at 31 December 1999 for regions not covered by an RFA will have their term extended to 31 March 2000;

* the volume able to be exported under each such licence for the extended period is restricted by a formula contained in the regulations; and

* during the extended period of operation, exporters will continue to be required to comply with licence conditions, including reporting on compliance with such conditions to the Woodchip Export Monitoring Unit of the Department of Agriculture, Fisheries and Forestry - Australia.

The Commonwealth will monitor the operation of the regulations over the three months to 31 March 2000. Further, in accordance with the National Competition Policy legislative review process, a Committee of Officials is scheduled to commence a review of these and related regulations under the Export Control Act 1982 prior to 30 June 2000.

Finally, maintenance of the status quo for a short period of time will ensure compliance costs for businesses are minimised.