



NEW ZEALAND

6 May 2011

Committee Secretary
Senate Rural Affairs and Transport References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Please find attached New Zealand's submission on the exposure draft and explanatory memorandum for the Illegal Logging Prohibition Bill 2011.

New Zealand recognises the efforts by Australia to combat illegal logging. We also share an interest in the global effort to address trade in illegal timber and wood products, and minimise its adverse environmental, social and economic impacts.

Thank you for the opportunity to comment on the draft Bill. We have considered it from our perspective as a significant forestry exporter that poses a low risk for illegal logging. In this respect we think it will be important, as the implementing regulations are developed, to get the detail right so that low risk exporters like New Zealand are not subjected to additional, and potentially unnecessary, costs. We suggest that consideration is given to products from low risk countries like New Zealand, being recognised as meeting Australia's legal logging requirements.

Given New Zealand and Australia's close trading relationship, we have also considered the draft Bill in the context of our Closer Economic Relations (CER) arrangements.

Finally, we have also looked at what this will mean for New Zealand's own illegal logging policy, given that Australian and New Zealand Ministers have emphasised the importance of cooperating to combat illegal logging. We look

forward to more detail becoming available on how the Australian regime will work to assist in our analysis.

We hope this submission assists the Committee in its consideration of the Bill.

Yours sincerely

Martyn Dunne
New Zealand High Commissioner to Australia

Submission by New Zealand to the Senate Rural Affairs and Transport Legislation Committee

Inquiry into the exposure draft and explanatory memorandum of the Australian Illegal Logging Prohibition Bill 2011

Illegal logging is a global issue and there are a number of initiatives internationally to address trade in illegal timber and wood products. New Zealand supports and shares Australia's goal to combat illegal logging and address the serious negative environmental, social and economic impacts associated with it.

Australia's draft Illegal Logging Prohibition Bill is an attempt to influence the demand side of illegal logging by regulating timber imports. This Bill provides the framework for prohibiting the importation and processing of raw logs that contain illegally logged timber. Subsequent regulations will provide the details of important aspects of the policy including what products will be covered and what will be required to prove legality.

New Zealand appreciates the opportunity to comment on the draft Bill. Our comments centre around:

- The importance of ensuring that the Bill does not impose unnecessary costs on low-risk exporting countries like New Zealand;
- How the Bill relates with the Closer Economic Relations agreement between New Zealand and Australia, including the Trans-Tasman Mutual Recognition Arrangement; and
- The link between the Bill and New Zealand's own illegal logging policy.

It is important that the Australian approach to combat illegal logging is flexible enough to recognise the different risks posed by different products, and the different requirements for legality in different countries. New Zealand has a rigorous regulatory framework which ensures the legality of all its forestry exports and low corruption. We consider that all forestry exports from New Zealand should be recognised and accepted as meeting Australia's legal logging requirements.

Forestry in New Zealand

There are two types of forests in New Zealand – indigenous forests and exotic plantation forests. There are more than 6 million hectares of indigenous forests and 1.8 million hectares of planted production forests.

Of the indigenous forests, 5 million hectares are managed by the Department of Conservation for conservation protection purposes. The remainder is privately owned. Exports of indigenous timber must come from forests managed in accordance with a registered sustainable forest management plan, which ensures their legality. However, there is very little indigenous timber exported or even harvested in New Zealand. Approximately 10,000 m³ of indigenous timber is harvested per annum (most of which is consumed domestically). New Zealand's total annual harvest is greater than 22,000,000 m³ per annum.

Over 99% by volume and by value of timber production comes from New Zealand's exotic planted forest estate, 94% of which is privately owned. Close to 100% of New Zealand's forestry exports come from timber sourced from these plantation forests. New Zealand is unique amongst forestry exporting countries in that virtually all of our forestry exports are from exotic plantation forests which were specifically established to be harvested.

There is no single national forestry law in New Zealand. The Resource Management Act 1991 (RMA) provides the statutory framework for environmental and resource management in New Zealand based on the sustainable management of natural physical resources (including forests). This is achieved through a series of national policy statements and standards, regional policy statements and plans, and district plans. These instruments set out the legal framework within which resource users can operate. Forest owners are required, when harvesting trees, to comply with the relevant environmental provisions and standards, implemented by local government councils, in accordance with the RMA.

Half of New Zealand's plantation forests have certification of their sustainability from the Forest Stewardship Council (FSC), of which legality is a crucial component. 10% of New Zealand wood processors are FSC certified, however these 10% of processors are responsible for processing up to half of the annual harvest. Forest stakeholders in New Zealand have also recently agreed to a National Standard for Certification of Plantation Forest Management that is now with the FSC for approval.

In global terms New Zealand is a small market for imported timber and wood products. In the year ending March 2009, imports represented only about 2% of New Zealand's sawn timber consumption. The Ministry of Agriculture and Forestry (MAF) commissioned research in 2008 which estimated that approximately 13% of this imported timber is of questionable legality - only 0.26% of domestic consumption. 80% of this is imported kwila.

Consistent with the Government's own illegal logging policy, the New Zealand Imported Tropical Timber Group (NZITTG), a group of major importers and retailers of tropical timber, voluntarily decided in April 2011 that as of 1 September 2011 they will no longer import or sell timber from Indonesia without credible third party verification of its legality. This is a significant move which targets kwila of which Indonesia is the main source. Members of the NZITTG account for over 80% of the importation and sale of tropical timber on the New Zealand market. This initiative substantially reduces the risk that illegally logged timber will enter New Zealand.

New Zealand is thus an extremely low risk country in terms of illegal logging or in terms of trade in illegally harvested timber and timber products. This is supported by the findings included in a report by Poyry which states, "New Zealand timber accounted for almost 40% of all softwood timber imports [into Australia] in 2008. New Zealand supply is all plantation grown and domestically-sourced and is almost all radiata pine, and a small amount of Douglas fir. Softwood from the southern hemisphere is generally from plantations, and considered to be low risk."¹

¹ "Legal forest products assurance – a risk assessment framework for assessing the legality of timber and wood products imported into Australia" (12 February 2010), www.daff.gov.au

Impacts of the Australian approach on New Zealand exporters

Australia is New Zealand's second-largest export market for forestry products, with the trade worth \$824 million in the year ending December 2010. New Zealand's main exports to Australia are processed products (see table 1). Imports of timber products from New Zealand make up 40% of Australia's total forestry imports. Thus, the implementation of Australia's illegal logging policy has potentially significant impacts to trans-Tasman trade.

Given that the vast majority of forestry exports from New Zealand originate from plantation forests which have been established specifically to be harvested, and that New Zealand has a rigorous regulatory framework which ensures the legality of the harvesting of these forests, we consider that all forestry products from New Zealand should be recognised as complying with Australia's legality requirements. This will reduce the risk that different importers use different process to verify legality, which will in turn require New Zealand exporters to Australia to meet varying requirements.

If New Zealand products are not recognised as legal, the extent of the impacts of the Bill will depend on the evidence Australia requires for the verification of legality. For example, should Australia require certification under a forest certification scheme, this would involve significant compliance costs for some forest owners. As noted above, 50% of the total plantation forest estate in New Zealand has FSC certification, and 10% of wood processors and manufacturers are FSC certified. This is due to the costs of obtaining and retaining certification which are significant, especially for small forest owners, which make up one third of the total plantation forest estate.

If Australia's legality verification requirements are based on the laws of the country of harvest, we are interested in what this will mean for New Zealand, as there is no law regarding legal harvesting of plantation forests per se. As mentioned above, when harvesting trees the owners of plantation forests are required to comply with the relevant environmental provisions and standards, implemented by local government councils in accordance with the Resource Management Act.

Forestry companies must have resource consents to harvest trees in New Zealand. Compliance with the consent constitutes legality, and territorial local authorities enforce compliance. However, in some instances local authorities recognise "preferred operator" status where certain contractors can operate without resource consents in some locations.

Implications for New Zealand's illegal logging policy

At the end of 2009 the New Zealand Government agreed its illegal logging policy, which consists of a package of domestic, bilateral and multilateral actions. The domestic actions included in the policy emphasis supporting a voluntary approach in the first instance, such as the NZITG initiative. Also included under the policy is the bilateral action to investigate the possibility of linking in with an Australian scheme to address illegal timber imports.

At this stage, the full impact of the Australian approach can not be assessed given that much of the detail of the policy implementation will be in regulations. We are interested to learn more about the details of how the Australian policy will be

implemented to assist in this analysis. In this respect, we have some specific comments and questions on the draft Bill.

Specific comments on the Bill

Commencement

We note that there will be a two year delay in implementation for some parts of the Bill, to allow the Australian government and the industry to work together to develop the co-regulatory aspects under the policy. New Zealand understands and is supportive of this delay in implementation. It will allow sufficient time for clarification, and for forestry industry exporters to work with their Australian customers to implement the processes and information requirements that will need to be put into place to adhere with the policy.

Definition of "illegally logged"

Section 5 of the draft Bill defines illegal logging as: "illegally logged, in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested".

This is definition covers only the harvesting of timber. It differs from the definition included in the Regulatory Impact Statement (RIS) included in the Explanatory Memorandum Consultation Draft which states:

"The Australian Government defines illegal logging as occurring when: Timber is stolen, Timber is harvested without the required approvals or in breach of a harvesting licence or law; Timber is bought sold, exported or imported and processed in breach of law; and/or Timber is harvested or trade is authorised through corrupt practices."

The Australian definition also differs with New Zealand's definition of illegal logging which states that "illegal logging takes place when timber is harvested, transported, brought or sold in violation of national and/or international laws." This definition involves all phases of the forest industry, including harvesting, transport, processing and trade. Illegal logging is any illegal act that may occur anywhere from the harvesting of a tree to the final timber product.

The definitions under the US and EU illegal logging legislation are much broader than the current proposed Australian definition and cover instances of corruption and timber smuggling along with land tenure issues including where timber is felled contrary to traditional land rights.

Definition of "regulated timber products"

The coverage of the Bill, that is, "**regulated timber products**"(section 5) will be prescribed by regulations. A confirmed list of the timber products which will be affected by this policy will be important to provide certainty to industry.

The RIS (page 14) recommends that the timber products covered by the policy include highly processed/composite timber and wood products from multiple sources complex products; that is, Category III products, listed on p.34 of the RIS.

We note that paper products are included in this list. There are many complexities associated with verifying the legality of paper products, and significant compliance costs of managing this risk along the chain of custody. We suggest that consideration is given to excluding paper products from the scope of the Bill.

We are also interested in how recycled timber products will be treated under the Bill and whether recycled pulp products will be covered under the regulated timber products regulations.

It is important that clarity and certainty around those products included in the scope of the Bill are achieved as soon as possible and we look forward to this list being developed. We would welcome the confirmation that the industry and interested stakeholders will be consulted on the regulations which will define "regulated timber products".

Legal logging requirements

Regulations will set out the **legal logging requirements** (section 13(1)) that importers of regulated timber products and processors of raw logs will have to comply with. This is a crucial part of the Bill. As mentioned above, it is important that the detail of these do not impose large or unnecessary compliance costs on those imports which do not pose a high risk in terms of illegal logging. We look forward to seeing the details of these requirements, including whether full forest certification (under such schemes as the FSC or the Programme of Endorsement of Forestry Certification Scheme), or third party verification of the legality of imports will be required.

We note that full forest certification schemes like FSC are more broadly focussed than legality. In order to achieve full forest certification forests must meet various criteria proving that they are sustainably managed. Substantiating legality is only one of the criteria evaluated under full forest certification schemes. In contrast legality verification schemes are focussed only on legality and providing the third party verification of the legality throughout the chain of custody

Approval and monitoring of timber industry certifiers

A **timber industry certifier** will be a person or body approved by the Minister under section 9(1) of the draft Bill. The purpose of the timber industry certifier is to ensure industry compliance with the legal logging requirements. The Bill does not contain a description of who can be considered to become a timber industry certifier.

The Explanatory Memorandum states that "in order to make the approval the Minister must be satisfied that the prospective certifier will ensure applicable legal logging requirements are met by any importer or regulated timber products or processor of raw logs they seek to approve, and that the certifier will comply with all applicable timber industry certifier requirements."

We are interested in the process for assessing applications by prospective timber industry certifiers including whether there will be a set of criteria against which applicants are assessed prior to Ministerial approval; how the objectivity and

impartiality of the timber industry certifiers will be assured; and whether stakeholders will be consulted prior to the Ministerial approval of the timber industry certifiers.

We note the Minister has the power to cancel the approval of a timber industry certifier (section 10), should they approve importers who have failed to comply with the legal logging requirements applicable for importing regulated timber product. This indicates that a review mechanism will need to be in place and a process for the Minister determine satisfaction of compliance by the timber industry certifiers with the timber industry certifier requirements (section 11). We are interested in how the performance of timber industry certifiers will be monitored once they are approved, including how often their performance will be reviewed. For example, will there be an opportunity for complaints to be laid about the performance of the timber industry certifiers?

We understand that timber industry certifiers will be industry-run associations and that these bodies will develop codes of conduct in response to the legislation, which will be accredited by the Commonwealth. If so, it will be important that there are appropriate processes in place to ensure that timber industry certifiers do not act in an anti-competitive way, for example, by using their position to restrict imports. Alternatively, an importer association could become a timber industry certifier and then certify importers in a relaxed fashion, undermining the goal of the legislation.

Timber industry certifier requirements

Section 12 lists the matters that may be included in timber industry certifier requirements. These requirements include developing codes of conduct for persons approved by certifiers. We are interested in how these codes will be developed and agreed and whether these will be based on the Draft Generic Code of Conduct for the Purchase and Supply of Legally Logged Timber and Wood-based Forest Products, developed in December 2009.

The work areas that timber industry certifiers are required to undertake under section 12 are quite extensive. If these timber industry certifiers are industry associations, this may require resources and expertise beyond their current levels. What types of assistance, if any, will be provided to the timber industry certifiers in this respect?

Timber industry certifiers will likely have to charge for their services in fulfilling the timber industry certifier requirements. Members (i.e. timber importers/timber processors) are likely to have to pay for these additional services which will increase their membership fees to the industry associations/timber industry certifiers.

Because of the diversity of timber imports, the costs associated with developing codes of conducts for timber importers associations will likely be higher than for domestic processors of raw logs. Importers of processed products covered by the Bill are likely to have to pay more to become certified or more in their membership fees to the timber industry certifiers. Subsequently, importers are likely to push their increased costs of operation onto exporters. They may offer lower prices for imported product as they look to secure their margins. These additional costs may also reduce the demand for timber imports.

Approval and monitoring of importers and processors

The timber industry certifiers will approve importers to import regulated timber products into Australia or to process raw logs based on their compliance with legal logging requirements.

Regulations will provide a set of requirements which importers and domestic processors must comply with through developing procedures to ensure the legal status of the timber they seek to import, process and place on the Australian market. By following these requirements importers of regulated timber products should avoid breaching the prohibition on importation of illegally logged timber.

The legal logging requirements may require importers or processors to assess the risk of importing or processing illegally logged timber, implement risk management measures, adhere to a code of conduct, retain and produce records, undergo audits, provide reports, and provide training for employees.

How the legality of timber products will be verified through the chain of custody, and the need for product traceability, will be important. This is very likely to impose significant costs on companies involved in importing regulated timber products, more so than for domestic log processing companies.

These compliance costs will also increase with the level of processing of the imported product. For instance it will be cheaper to verify the legality of logs because of the shorter chain of custody than for more processed timber products. This could negatively impact on the demand for value added processed timber products, leading to importers favouring unprocessed or semi-processed products over processed products. New Zealand's forestry exports to Australia are mainly processed products.

The Minister can also approve an importer/processor independently if there is no relevant timber industry certifier, or for any other reason, and the Minister can cancel this approval. Again, the criteria and process for assessing such applications will be important, as will the processes for reviewing and monitoring their performance. We would be interested to know whether there will be an opportunity for forestry exporters to the Australian market to be able to lay complaints about the performance of an importer.

In terms of monitoring, the relationship between timber industry certifiers and the importers and processors that they certify will also be important, for example how timber industry certifiers will monitor and review the performance of the importers and processors that they have certified, and how often they will do this.

Monitoring and enforcement at the border

We note that there is no requirement for a declaration by importers to provide information on the timber products they seek to import into Australia. This is different from both the US and EU legislation which require declaration at the first point of entry.

There also does not appear to be a mechanism for surveillance at the border. For instance, the draft Bill does not indicate that there will be attempts to determine at the border whether or not importers are approved to import regulated timber products into the country. It seems as though monitoring compliance occurs once the timber

has entered the market, with officers using their monitoring efforts to substantiate whether importers have knowingly imported illegally logged products and have therefore committed an offence.

The Explanatory Memorandum states that the Bill does not prescribe the "direct forfeiture for regulated timber products that are found in breach of the prohibition. However, it is expected that section 229 of the Customs Act 1901 may be invoked by the Commonwealth to direct the forfeiture of goods found in breach of the prohibition and thereby prevent their entry onto the Australian market." (p.46.) This would seem to indicate that there will be monitoring at the border. We would be interested if more information could be provided on how the Bill will be monitored and enforced and whether this will involve monitoring at the border.

Table 1 - Value of New Zealand's Category III forest products exports to Australia, 2010

Product	HS Codes	Value (in millions NZD)	Percentage of trade
All exports to Australia	All	10025.2	100%
Wood	44	409	4%
Paper Paperboard	48	315.8	3%
Furniture and bedding	94	109.5	1%
Woodpulp	47	86.7	1%
Wood	4400	409	100%
Wood in rough	4403	0.01	0%
Sawn wood	4407	177.9	43%
Veneer	4408	2.5	1%
Continuously shaped wood	4409	84.3	21%
Particleboard	4410	5.0	1%
Fibreboard	4411	7.3	2%
Plywood	4412	62.1	15%
Paper Paperboard	4800	315.8	100%
Newsprint	4801	0	
Printing and writing	4802	0.5	
Household and Sanitary	4803	16.2	5%
Packaging and industrial	4804	52.3	17%
	4805	21.7	7%
	4806	0.2	
	4807	1.9	1%
	4808	0.05	
	4809	0.03	
	4810	58.8	19%
	4811	17.9	6%
Paper manufactures	4812	0.01	
	4813	0.01	
	4814	0.7	
	4815	0	
	4816	0.05	
	4817	9.6	3%
Household and sanitary	4818	80.1	25%
	4819	10.2	3%
	4820	10.7	3%
	4821	22.1	7%
	4822	0.03	
	4823	12.9	4%
Furniture and Bedding	9400	109.5	100%
Furniture	9403	44.7	41%
Woodpulp	4700	86.7	100%
Mechanical pulp	4701	0.1	
Chemical pulp	4702	0	
	4703	86.4	100%
	4704	0	
Semi-chemical	4705	0.1	
	4706	0	
	4707	0.1	

Source – World Trade Atlas