



HUMANE SOCIETY INTERNATIONAL

Australian Office:
PO Box 439 Avalon
NSW 2107
Australia
+612 9973 1728
admin@hsi.org.au
www.hsi.org.au

Head Office:
2100 L Street, NW
Washington, DC 20037
USA
301-258-3010
Fax: 301-258-3082
hsi@hsiusus.org

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HUMANE SOCIETY INTERNATIONAL SUBMISSION TO THE SENATE RURAL AFFAIRS AND TRANSPORT COMMITTEE INQUIRY INTO THE EXPOSURE DRAFT AND EXPLANATORY MEMORANDUM OF THE ILLEGAL LOGGING PROHIBITION BILL

Humane Society International (HSI) has, for many years, been calling for Australian legislation to ban the import, possession or use of illegally logged or unsustainably produced timber and other forest products derived from the inappropriate logging or clearing of native forests in other countries.

After committing to introduce legislation prior to the 2007 election the Labor Government has, at long last, in 2011, produced a draft Bill. The Government's tardy action in finally introducing profoundly flawed legislation is very disappointing. The Bill, as it stands, is extremely weak and cannot be supported by HSI.

HSI's strong preference (as we have previously proposed to the Government) is to use the Environment Protection and Biodiversity Conservation Act, 1999 (EPBC Act) as the legislative means to ban the import, possession or use of illegally logged or unsustainably produced timber. We do not consider there is a need for new stand-alone legislation. The EPBC Act should be the preferred instrument for the following reasons:

- The issue of importing into Australia of illegally logged or unsustainably produced timber is essentially an environmental and sustainability issue relating to the loss of the Earth's critically important natural tropical rainforests and damage to local communities and landholders dependent on these forests. Therefore Australia's principal piece of environmental

legislation, the EPBC Act should be used. We consider that the issue of protection of natural tropical forests should be the responsibility of the environment Ministry, not the timber production Ministry.

- The EPBC Act already regulates the importation and trade of threatened flora and fauna consistently with the Convention on the International trade of Endangered Species (CITES). The regulation of timber imports is consistent with this treaty as well as the Convention on Biological Diversity and the International Tropical Timbers Agreement.
- The current EPBC Act review process offers a good opportunity for the Government to introduce amendments to the Act in the form of a new part that bans the import, possession or use of illegally logged or unsustainably produced timber.

Further information on this proposal is contained in the attached report by the Environment Defenders Office, New South Wales to HSI, and previously submitted to the Government.

If the Government decides to proceed with the proposed legislation then at the very least, the legislation needs to match the provisions of the USA's recently upgraded Lacey Act. Two key considerations in this regard are that:

- a) It should be a serious criminal offence to possess, sell or buy wood or wood products derived from inappropriate sources – not just to import them.
- b) Interested citizens and organisations should have standing to take appropriate action under both the legislation and any subsequent regulations, including the ability to contest the legality or sustainability of the operations from which the products were derived.

Additionally, the Bill as currently drafted is no more than a 'shell' leaving almost all substantive matters to be dealt with by subsequent regulations. This is unacceptable. If the legislation is to be fit for purpose, the full range of offences and penalties need to be set out in the legislation itself. If left to regulations, the chances of the full range of offences being appropriately identified and effectively penalised are remote.

Objects of the Bill

While an important objective of such legislation would be to protect domestic Australian timber producers and importers of legally logged timber, the other key objective should be to assist in protecting the natural carbon/biodiversity stores of the Planet to be found in natural forests. Therefore the object clause of the Act should include the following:

“To contribute to the conservation of biodiversity and natural terrestrial carbon stores in forest ecosystems”

The Bill should relate to the importation of all naturally produced forest products or plants, including timber

While the prohibition of importation of illegally or unsustainably produced *timber* will be a key consideration of the legislation the Act should also prohibit the importation of other illegally or unsustainably produced forest products /plants such as rattan. This is because, as we propose above, that an object of the Act should be to conserve natural carbon stores and biodiversity.

Hence the Act should generally refer to forest products rather than timber. In defining ‘forest products’ the Act could use a definition that draws on a definition of ‘plants ‘ as used in the US Lacey Act where ‘plant’ is defined as follows:

The term ‘plant’ means any wild member of the plant kingdom, including roots, seeds, parts, and products thereof (but excluding common food crops and cultivars)’

Sustainability

A fundamental concern is that the Bill in only dealing with illegal logging only

addresses part of the problem and that it should also restrict the import of *unsustainably* produced forest plants. Unsustainably, but legally produced forest plants, probably causes as much or more degradation of the Planet's disappearing natural forests as outright illegal logging.

Notwithstanding the difficulties in establishing an acceptable standard for sustainably produced plants the Bill should therefore prohibit the import of unsustainably produced forest products or plants.

The Bill should therefore contain a new part that provides that only forest plants meeting approved sustainability certification criteria be allowed to be imported into Australia. Only certification schemes that involve rigorous, independent assessment by third parties of the sustainability of harvesting operations should be eligible.

The objects part of the Act should also cover the sustainability issue by providing that an object of the Act is:

“to prohibit the import into Australia of forest plants that are from unsustainable productions systems, including harvesting”

The prohibition should come into effect immediately upon the passing of the legislation

The prohibition in the Draft Bill is contingent upon regulations that define ‘regulated timber product’ . These regulations could take up to two years or longer to come into effect. This is unacceptable in terms of the urgency of the situation.

Therefore the Bill should prescribe a non-exhaustive list of regulated timber (or as proposed above ‘forest’) products that can be expanded upon in the regulations as has been done in the EU.

Need for a declaration requirement

The Bill should contain a declaration provision requiring importers to provide information on the forest products they seek to import into Australia- including information on species, the supplier, name and address of recipient trader, country of origin etc. This would be consistent with EU requirements and the US Lacey Act.

The definition of the prohibited action is too narrow

The Bill merely defines the prohibited action only in terms of 'illegal logging' and only in a narrow way.

HSI proposes that the Act prohibit the 'importation of illegal and unsustainable produced forest products'. The Act should define production to not only include 'harvesting' but all other aspects of production /supply chain. 'Illegal' should also be defined in terms of all applicable legislation that is relevant e.g. land tenure legislation.

The EU requirements and the US Lacey Act could be drawn upon as they use broader definitions.

Process for approving certifiers and importers is unclear and weak

The Draft Bill sets out a process for approving certifiers who will certify importers – but the structure of this provision is considerably weaker than the EU Regulations. For example there is no process to ensure the neutrality of the certifiers- under the Bill a certifier could be the importer!

No enforcement or monitoring for illegal timber

While the Bill has created a prohibition on the import of illegally logged timber there is no provision in the Bill for ongoing- enforcement of this prohibition.

The provisions that allow an officer to be appointed do not constitute an enforcement regime. Enforcement and monitoring are need both in relation to point of import inspections and testing, and also of certifiers.

As currently worded, this legislation will not take effect until regulations defining regulated timber are passed. Once passed, there is effectively only one provision that is enforceable – the need to ensure that timber is certified before entering the country. The only mechanism of enforcement is certification from an approved certifier. Certification is of importers, not of imports, and remains valid for an indeterminate period. There is no requirement that even certification is checked at the point of import. There is no detail on whether the prohibition will be enforced, or the frequency or intensity of enforcing the prohibition, which depends solely on diligence by the authorities.

Other matters

The EU and the United States already has legislation in place but more needs to be done to address the global problem of trade in illegally and unsustainably produced forest products.

Therefore there should be a firm commitment by Government, and the development of associated policy and programs, to work internationally and regionally both with source and importing countries to bring about global legislative action to ban trade in illegally and unsustainably produced forest products.

Conclusion

HSI would be pleased to expand on these points in more detail by appearing before the Committee.