



Government of Canada
High Commission of Canada

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December 20 2011

Commonwealth Avenue
Canberra ACT 2600

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

Dear Ms Radcliffe,

I refer to your letter of 28 November 2011 to Mr David Ingham, Trade Commissioner, Canadian High Commission, advising that the Senate had referred the Illegal Logging Prohibition Bill 2011 to the Senate Rural Affairs and Transport Legislation Committee for inquiry and report and inviting the Canadian High Commission to make a written submission to the inquiry.

We appreciate the opportunity to provide a submission to the Senate Rural Affairs and Transport Legislation Committee as it undertakes its review. Attached to this letter is the Canadian Government's submission to the inquiry. The submission includes some of Canada's outstanding concerns and suggestions that we respectfully present for consideration by the Senate Committee in its review of the Bill and by the drafters of the subordinate legislative instruments under the *Illegal Logging Prohibition Act 2011*.

The Canadian Government is happy to provide further information if the Senate Committee has any specific questions. If you have any queries please contact Mr David Ingham, Trade Commissioner, Canadian High Commission in the first instance.

Yours sincerely,

David McKinnon
Acting High Commissioner

Canada



December 20, 2011

Canada's Concerns and Suggestions for Australia's Illegal Logging Prohibition Bill and the Development of the Subordinate Legislation

Canada appreciates the opportunity to provide written comments to the Senate Rural Affairs and Transport Legislation Committee on the Illegal Logging Prohibition Bill and the development of the subordinate legislation under the Bill.

Canada supports the objective of this Bill to reduce the harmful environmental, social and economic impacts of illegal logging. Australia is an important market for Canadian forest product producers with exports of A\$105.5 million in 2010. Canada is encouraged that due diligence requirements related to information gathering, risk assessment and identification, and risk mitigation will be developed in consultation with industry and key stakeholders to assist importers to meet the due diligence requirements in a cost effective, efficient and adaptable manner. Canada is pleased that the details of the due diligence process will be based on a risk management approach¹. Canada welcomes the acknowledgement in the Explanatory Memorandum accompanying the Bill that in respect of due diligence requirements, mitigation measures are unnecessary where the level of risk assessed is negligible. As such, Canada infers that Australia has already recognized that the subordinate legislation will need to take a risk-based approach and that the due diligence requirements outlined in Clause 14 (3) will be tailored accordingly.

While Canada is reassured about certain aspects of the Bill, Canada has some outstanding concerns and suggestions that we respectfully present for consideration by the Senate Committee in its review of the Bill and by the drafters of the subordinate legislative instruments. Canada believes these comments will help ensure that due diligence requirements and customs import declarations do not end up imposing unnecessary costs and burdens on Canadian timber exporters.

Canada's Concerns:

1) The implementation of the Bill and subordinate legislation may impose unnecessary burdens and costs on trade in forest products from countries with effective legislative supervision and discourage imports of timber products into Australia:

Although detailed information and risk assessment requirements may be necessary to ensure the legality of forest products made of wood harvested in regions which pose a significant risk of illegal logging, the imposition of such requirements on products made of wood harvested in regions with effective legislative supervision is not necessary. Such

¹ Illegal Logging Prohibition Bill 2011, Second Reading Speech

requirements would not add value to efforts to fight illegal logging and would unnecessarily undermine the cost competitiveness of timber products in general and imported timber products in particular.

The costs of gathering detailed information and conducting risk assessments to support the Bill's due diligence requirements will ultimately be passed on to producers up the supply chain. These costs will be higher the further the products are along the value chain. The costs for Australian importers to provide detailed information and to conduct risk assessments under the Bill's due diligence requirements could serve to discourage imports of timber products into Australia.

Importers of timber and timber products could be required to provide a range of information (i.e. name of the kind of timber, details of origin and harvest, including any certification, name and business addresses of, and other details about, suppliers of regulated timber or timber products, and evidence of compliance with the applicable laws of the country in which the timber was harvested) to comply with the Bill's due diligence requirements when their products are placed in the Australian market. Tracking the wood used in timber products from the origin where the timber was harvested would create significant administrative burdens for the operators involved (please see Annex 1 for two examples illustrating these difficulties). Example 1 in Annex 1 of this document illustrates that the specific origins of the timber used as input in primary and value-added products are lost at an early stage in the production process. Example 2 in Annex 1 illustrates the complex mix of timber inputs and supply sources involved in pre-fabricated houses. This complex mix further exacerbates the difficulties associated with tracing the specific origins of the timber explained in Example 1.

It is impractical for manufacturers of primary and value-added products purchasing inputs from multiple suppliers and mixing these inputs in the production process to retrace the forest of origin. In most cases, information identifying the country of harvest is all that is available. Documentation indicating compliance of timber products with applicable legislation does not typically follow the products in the processing and supply chains. These costs can be expected to translate into higher prices for importers and consumers.

Detailed information and risk assessment requirements are unnecessary for imports of forest products made of wood harvested in countries with effective legislative supervision, such as Canada (see Annex 2 for more information on Canada's legislative framework). The risk of illegal logging in Canada is negligible as a result of the effective enforcement of Canada's comprehensive legislative and regulatory framework, which provides for regular scrutiny and auditing of forest companies. Due diligence resources should be used in a way that ensures the contribution to the fight against illegal logging is maximized, while avoiding unnecessary restrictions on trade, the imposition of unnecessary burdens on the forest products industry, or unnecessary costs for consumers.

2) As a result of the imposition of greater burdens on imported timber products, the implementation of the Bill could favour processing of timber products in Australia to the detriment of Australian consumers:

As the Bill's due diligence requirements only apply when a product is first placed on the Australian market or when processing domestic raw logs, timber products made in Australia would be treated differently under the Bill than imported timber products. Differentiation should be made in recognition of countries operating under a legal logging regime.

a) Scrutiny of timber products made in Australia:

The first time products made of timber harvested in Australia are placed on the market would most likely occur when domestically grown logs are sold to Australia-based sawmills. While the Australian industry processing raw logs must meet due diligence requirements, timber products processed in Australia beyond this point are not subject to the Bill's due diligence requirements.

b) Scrutiny of timber products made in countries outside Australia:

Timber products from countries outside Australia are first placed on the Australian market upon importation into Australia. Due diligence requirements to retrace the wood contained in imported timber products to the origin where the timber was harvested, to provide information indicating compliance with applicable laws, and to conduct risk assessments, would create significant administrative costs and burdens for the importers involved, far greater than those applicable when the same products, particularly composite products, are made in Australia.

c) Impact of differential treatment of non-Australian vs. Australian timber products:

These administrative costs and burdens could make imports of timber products less competitive in the Australian market compared to similar products made in Australia and bring into question whether the implementation of the Bill would be consistent with Australia's international trade obligations. Additionally, importers are required to undertake a two-step process to comply with the due diligence requirements of the Bill at the Australian border. This extra burden on importers could favour timber products processed in Australia and lead to increased prices for Australian consumers of timber products.

3) The customs import declaration could be overly burdensome for countries with negligible risk of illegal logging:

Canada understands that the purpose of the customs import declaration is to enable Australia to collect information that will be used to further the Bill's overall objective of reducing the harmful environmental, social and economic impacts of illegal logging. The declaration also enables importers and exporters, as well as producers and consumers to increase their awareness of supply chains, particularly in the regions in which the timber of questionable legality is being harvested. Awareness, coupled with the threat of

prosecution, enables those who trade in timber and timber products to better exercise due care in their sourcing decisions.

Due care, however, requires a prior knowledge of which countries of harvest exhibit a high risk of illegal timber harvesting. The current implementation of the Bill does not equip importers with prior knowledge that differentiates high-risk from negligible risk countries, which is necessary for exercising responsible sourcing.

When drafting the subordinate legislation, Canada encourages Australia to keep in mind the aim of the customs import declaration. In light of its intended purpose, Canada would question the usefulness of collecting information additional to “country of harvest” where an identified country of harvest uniformly exhibits negligible risk of illegal logging, regardless of the species in question. That is, after having identified that a shipment of imported timber was harvested in a country with negligible risk, additional information on the import declaration is not necessary and does not further advance the objectives of the legislation.

Canada’s Suggestions:

Canada proposes the following elements to guide the development of the subordinate legislation. These suggestions seek to ensure that the application of the Bill’s due diligence requirements effectively contributes to the Bill’s objective of preventing the entry of illegally harvested timber products into Australia while minimizing the burden placed on the trade in legal forest products.

1) Provide an objective, transparent and consistent mechanism to evaluate the risk of illegal logging in a given country; pursuant to Sub clause 14(5)(a) of Australia’s Illegal Logging Prohibition Bill.

Sub clause 14(5)(a) (Due Diligence Requirements) of the Bill specifies that laws, rules or processes, including the laws, or processes under laws, in force in a state, a territory or another country may be utilized, in a manner and form prescribed in regulations [as part of an importer’s due diligence process]. This sub clause provides a basis for using well-established and effective legislative supervision as an adequate assurance of the legality of forest products. For example, like Australia, Canada’s rigorous legislative supervision provides assurance that Canadian forest products are made from timber originating from legal sources. Canadian legislative supervision occurs at the earliest stage of the supply chain before logs are shipped to mills for processing, well before the Bill’s due diligence requirements would come into play. Canadian jurisdictions (federal and provincial) have extensive forestry laws and regulations, which include forest monitoring programs to inspect and report on access, harvest, renewal and maintenance activities. While specific laws and regulations may differ between jurisdictions, they all provide regular scrutiny and audits of Canadian forest companies. As a result of these world-leading forestry practices and regulatory regimes, Canada represents a negligible risk of illegal logging. For a brief summary outlining Canada’s legislative supervision, please refer to Annex 2.

2) Develop a consistent approach to the utilization of publicly available information sources to document the risk of illegal logging in different countries for use by importers as a first step in a due diligence system.

Canada encourages the Australian government to establish a process that assesses the level of risk of illegal harvesting in different countries of harvest, taking into account legal, regulatory and enforcement regimes, and industry practices. Linking information collection requirements on custom import declarations to the level of identified risk for countries of harvest would allow Australia to allocate administrative and enforcement resources to the regions of greatest risk. This would increase both the efficiency and effectiveness of the use of such resources – without inadvertently decreasing the ability of enforcement officials detecting higher-risk sources of transshipments through negligible-risk countries. This risk-based approach would be consistent with reforms currently being introduced in Australia's quarantine arrangements which target resources to those areas of greatest return from a risk management perspective.

Once this country risk assessment has taken place, this information could be made publicly available so that importers could use it as a first step in meeting the due diligence requirements, thereby removing uncertainty and ensuring consistency in their application throughout Australia. Importers could reference these publicly available information sources to identify countries presenting a negligible risk of illegal logging as a basis for their due diligence.

Conclusion

In conclusion, Canada appreciates the opportunity to provide comments to the Senate Rural Affairs and Transport References Committee on the Australian Illegal Logging Prohibition Bill and to the drafters of subordinate legislative instruments. Canada understands the importance of fighting illegal logging and its associated trade, as well as fostering trade in legally harvested forest products.

Canada continues to be a reliable supplier of sustainable and legal forest products to Australia. Canada appreciates the Senate Committee's consideration of our concerns and suggestions in the elaboration of the subordinate legislation and looks forward to further opportunities to provide input in this process.

Annex 1 - Examples which Illustrate the Impracticality of Tracing Timber back to the Origin

Example 1: A small sawmill in Canada providing lumber and chips to other companies for further processing

- In one week, the sawmill consumed 10,000 m³ of logs (approximately 12,000 individual logs).
- These logs were supplied by 16 individual log suppliers from an area where there are thousands of suppliers.
- The 16 suppliers secured those logs from 800 cut blocks (areas of concession), which were covered by 200 different cutting permits.
- The logs delivered to the sawmill were sorted and grouped by size and grade. Some species were sorted separately, while other species were combined. The sorted logs were added to logs of the same characteristics from other suppliers.
- The sawmill cut the logs into solid lumber products sorted by dimension and quality, and produced large quantities of chips. At this point the logs lost their identity, and became untraceable to their supplier or concession of origin.
- All logs were scaled - the process of measuring or estimating the volume of trees after they are felled to determine stumpage revenue for the provincial government, and to monitor against the annual allowable cut- and came from legally sourced provincial harvest sites (areas of concession) overseen by the provincial forestry department.

Lumber Products

- Some of the mill's solid lumber production was sold to lumber brokers who combined this small sawmill's lumber with similar species and grades of lumber from other mills and then shipped it to Australia and other markets for manufacture into windows and door stock.
- Some of the low-grade lumber produced by the sawmill was sold to a remanufacturer who then re-cut it to recover the appearance grade portions and sold it on to a builder's joinery factory.
 - The builder's joinery factory combined this lumber with similar product from other suppliers and then remanufactured the lumber further. The company then sold some of the production directly into Australia, and sold other portions to a local outdoor storage shed pre-fabricated kit manufacturer.
 - The outdoor storage shed pre-fabricated kit manufacturer produced kits from the builder's joinery lumber in addition to wood components from other suppliers. The kits were then sold into Australia or other markets.

Chip Products

- The chips produced by the sawmill were stored in a large silo storage unit. This silo was emptied once a week on to a chip barge that is towed to a pulp mill.
 - The chips were blown from the barge to a chip pile that includes chips from 12 other regional sawmills. The pulp mill produced pulp that was sold to a paper company.
 - The paper company added the pulp to pulp from other pulp mills and produced paper products that were sold into Australia and other markets.

Example 2: Pre-Fabricated House

- A pre-fabricated house manufacturer made 10 homes that were sold into the Australian marketplace.
- Pre-fabricated houses are made of many different wood products, several of these have been highlighted in **bold** below, which would come from a variety of suppliers across Canada and the US. While this example outlines many of these products, it is not an exhaustive list.
- The average number of unique pieces and the average total number of pieces exported from Canada to Australia for a typical pre-fabricated house is provided for each wood product (*italicized in brackets below*)
- The **framing lumber** was SPF (Spruce, Pine or Fir) purchased from numerous Eastern Canadian sawmills. (*average number of unique pieces is 36 and average total number of pieces shipped is 1680*)
- The **plywood** was Douglas fir and Spruce from British Columbia and Alberta and was used as roof panels. (*average number of unique pieces is 4 and average total number of pieces shipped is 280*)
- The **floor joists** are composed of two different engineered wood products (*average number of unique pieces is 16 and average total number of pieces shipped is 206*); **Laminated Veneer Lumber** (LVL) of Eastern Canadian SPF and **OSB** from Ontario. The OSB was formed from chips provided by 12 local Ontario sawmills.
- The appearance-grade **wood panelling** was purchased from a remanufacturer. The remanufacturer made the V-joint panelling from Western Red Cedar boards purchased from up to 50 sawmills on the coast of British Columbia. (*average number of unique pieces is 2 and average total number of pieces shipped is 5241*)
- The **crown mouldings and base boards** were made from finger-joined Eastern Pine that was manufactured in Quebec. The source of the finger-joined boards was trim-ends that came from over 60 sawmills throughout Quebec, Ontario and adjacent US border mills. (*average number of unique pieces is 33 and average total number of pieces shipped is 4209*)
- The **interior doors and bi-fold closet doors** were made from spruce plywood panels with poplar inner cores and solid spruce struts – which were manufactured in Quebec and Ontario. (*average number of unique pieces is 8 and average total number of pieces shipped is 12*)
- The **fibre board** used under the kitchen counter top laminate came from an Ontario fibre board manufacturer who collected the residual fibre from over 40 sawmills – all of which was blended together and formed into a compressed fibre board product base. (*average number of unique pieces is 4 and average total number of pieces shipped is 4*)
- The **exterior doors** were made from Western Red Cedar from British Columbia. (*average number of unique pieces is 2 and average total number of pieces shipped is 2*)
- The **siding** used on the outside of the house was made from Western Red Cedar purchased from up to 50 sawmills on the coast of British Columbia. (*average number of unique pieces is 1 and average total number of pieces shipped is 5016*)
- All products were made of timber from legally harvested sites (concessions of harvest) regulated by provincial ministries, or in the case of US imports, by the U.S. Forest Service or State forest departments.

Annex 2 - A Brief Overview of Legislative Supervision in Canada

Context

- Canada has 402 million hectares of forest or other wooded land, 93% of which is publicly owned. The federal and provincial/territorial governments divide responsibility between specific portions of the country's public forests.
- The provinces and territories have jurisdiction of over 77% of the forests, and legislative authority over their enhancement, conservation and management. They develop and enforce legislation, regulations and policies, allocate timber licenses, collect forest management fees and gather data. While the specific laws within each province and territory may differ, they all provide a strong legal framework which ensures legally sourced and sustainably managed timber.
- The federal government has jurisdiction over the remaining 16% of Canada's publicly owned forests (most of which is not primarily managed for forest harvest).
- Together, Canada's suite of legislation and regulations represent one of the most stringent forest management regimes in the world.

Canada's Track Record

- In 2004, an independent study by Dr. Cashore of Yale University, comparing forest policy and regulations across 38 jurisdictions around the world confirmed that in Canada there are a wide number of institutionalized, formal procedures to ensure compliance with Canadian policy. This study also concluded that Canada's policies and practices are among the most stringent in the world.
- Similarly, in 2009, an independent study by the Finnish research company Indufor Oy, compared forest legislation and forest certification schemes in 11 jurisdictions around the world. Two of their key conclusions were:
 - "Canada (British Columbia and Ontario) and Australia (New South Wales) are the countries with the most demanding legislation on the studied elements" and
 - "the strength of the legislation contributes to the strictness of the standard more than does the type of the standard (FSC or PEFC)."
- These studies reaffirm the fact that Canada continues to have world-leading forestry practices and regulatory regimes and is consequently a negligible risk for illegal logging.

Legislative Supervision

- The foundation for sustainable forest management in Canada is a comprehensive body of provincial and federal forestry and related laws and regulations.
- Each jurisdiction has adopted legislation that includes checks and controls that ensure timber is harvested legally.
- Canadian jurisdictions have rigorous programs dedicated to inspections, compliance and enforcement of forest legislation.
- Provincial and territorial ministries responsible for forest management monitor company operations to ensure that all laws and regulations are respected. Companies must adhere to their government-approved forest management plans, which specify where and how much they can harvest.
- Forestry operations in Canada are also bound by national legislation.