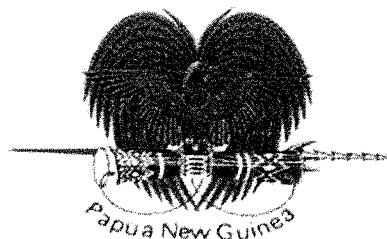




Submission No 21

Inquiry into Illegal Logging Prohibition Bill 2011

Organisation: Papua New Guinea High Commission
39-41 Forster Crescent
Yarralumla ACT 2600



PAPUA NEW GUINEA HIGH COMMISSION
Office of the High Commissioner

15th May 2012

Mr. Jerome Brown
Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence & Trade
P O Box 6021
Parliament House
Canberra ACT 2600

Dear Mr. Brown

I acknowledge receipt of your letter of 13th April 2012 and regret the delayed response given that the relevant Government authorities in PNG, including the PNG Forest Industry Association and the Department of Foreign Affairs & Trade were preparing PNG's submission on this issue.

I thank you for giving Papua New Guinea the opportunity to submit a submission for consideration by the Joint Standing Committee on Foreign Affairs, Defence & Trade on the Illegal Logging Prohibition Bill 2011.

I am now pleased to submit PNG's submission on this issue.

Yours sincerely

Charles W Lepani
High Commissioner

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Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Joint Committee)

on

Illegal Logging Prohibition Bill, 2011

Introduction

Papua New Guinea (PNG) acknowledges the importance of the long historical ties and established relationship on wide-ranging issues of mutual interest with Australia based on geographical proximity, common historical, cultural, economic and political links. PNG's desires to further promote and expand this relationship through mutually beneficial trade and economic arrangements between our two countries.

PNG recognizes the changing nature of our relationship due to evolving trends of developments both at the bilateral and multilateral levels. These changes obviously require reviewing our bilateral relations in totality, as we continue to maintain flexibility where necessary to reflect the evolving nature of our cooperation and friendship.

PNG and Australia are currently engaged in renegotiating at the bilateral level the Economic Cooperation Treaty. The final Treaty outcome is meant to reflect the more evolved and matured relationship we share, one of mutual respect and responsibility, dealing with each other as equal partners. The new Treaty is intended to move our bilateral relations to one more of economic cooperation with trade, investment and commerce, the key elements, away from PNG being a dependent of Australia Aid.

Maintaining consistency at all levels, be it bilateral, regional or multilateral level is crucial in ensuring that we promote and utilize the opportunities that exist on an open and nondiscriminatory basis. Whilst we recognize the cooperative relationship between our two countries, PNG like Australia is a member of the World Trade Organization (WTO) is conscious of its rights and obligations as a member of that Organization and adheres to and practices the principles of open and non-discrimination as pillars of the WTO.

In view of this changing relationship and evolving issues, PNG takes great interest in issues affecting its key industries such as mining and petroleum, agriculture, fishery and forestry to name a few and the impact that such issues will have on that each of these industries such as the case here of the "Illegal Logging Prohibition Bill, 2011".

PNG acknowledges Australia's attempt to abate increase in international trade of illegal logging and illegally logged timber as it is a major problem for many developing timber-producing countries. Many studies have revealed that such trade causes environmental damage, costs governments billions of dollars in lost revenue, promotes corruption, undermines the rule of law and good governance and funds armed conflicts. It also deprives local communities from direct benefits and retards sustainable development in some countries.

Whilst European Union (EU) came up with the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan in 2003; US has its Lacey Act; and now Australia with this proposed Bill. All these countries and markets are PNG's major trading partners and potential markets to export and equally so members of the WTO.

PNG has no experience exporting neither to EU through Volunteering Partnership Agreement under the FLEGT nor to the US under the Lacey Act. Since Australia is PNG's major trading partner, though not specifically in timber and wood products, it is a concern on the impact of such law on our timber exports accessing Australian market and future development of our forestry industry.

PNG has made a number of submissions on the Bill to the various Committees: the latest being the submission by the Papua New Guinea Forest Authority (PNGFA) dated 14th February, 2012 (Attachment A) and the Papua New Guinea Forest Industry Association (PNGFIA) dated January, 2012 (Attachment B). These views are re-enforced in this submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Joint Committee) on the Illegal Logging Prohibition Bill, 2011.

PNG particularly notes that the Bill has the following intentions:

- 1) prohibits the importation of illegally logged timber and the processing of illegally logged raw logs;
- 2) requires importers of regulated timber products and processors of raw logs to conduct due diligence in order to reduce the risk that illegally logged timber is imported or processed;
- 3) that importers of regulated timber products must provide declarations, at the time of import, to the Customs Minister about the due diligence that they have undertaken; and
- 4) provides for inspectors to exercise monitoring, investigation and enforcement powers for the purposes of this Act.

In recognizing the above intentions, PNG stresses again that it has relevant legal instruments, for example the *Forestry Act, 1991* (as amended) and the *Customs (Prohibition Export) Act, Chapter 101* under which it regulates the harvest and export of timber products. In this respect, PNG does not view illegal logging as an issue for the country. Hence, PNG still stands by its initial statements which are being elaborated below as per the various sections/parts of the Bill:

PART 1 Definition of Illegal Logging/Timber

Although PNG believes that there is no internationally accepted definition of illegal logging or timber, it would generally go by the definition given by the International Tropical Timber Organization (ITTO), which refers to 'the removal of logs in a manner that is against the provisions of relevant laws of a particular country. In this context PNG would argue that our existing forestry and customs laws are applicable and they are legal for the purposes of trade of timber products.

Under the preliminary part of the bill, the term illegally logged timber is defined as harvesting of timber in violation of laws that are in place (whether or not in Australia) where the timber was harvested. It is unclear how this will be interpreted and whether this definition will cover only environmental laws and timber harvesting rights or whether it will extend to labour laws or land tenure laws. PNG would suggest that only the appropriate PNG laws and international laws that PNG has acceded to relating to the harvest and trade of timber be applicable. PNG will decide to trade with Australia if our exports cannot adequately meet Australian laws and requirements.

PART 2 - Importing

PNG wishes to reiterate that there are already provisions in PNG laws pertaining to due diligence and that the legislation once adopted will impose an immediate ban and make it a crime to import a product made from illegally logged timber and exports of illegally logged and harvested timber. It is unclear at this stage from the bill what legal standard will apply to importers. The bill indicates the general prohibition against importing illegal timber applies to importers regardless of any defence.

As stated by the PNGFIA, the risk to importers from a clearly defined legal standard on the general prohibition is that it will hinder importers from wanting to import from countries like PNG because they would not know if the timber was legal. The due diligence exercise and related activities may be too costly for PNG's exports to be competitive in the Australian market.

PART 3 – Processing

PNG is currently satisfied with its timber exports, which are authorized by the appropriate government agencies as legally harvested. In some cases these timber products are further certified by third party certification schemes, for example the Smartwood under the Forest Stewardship Council (FSC) and the Timber Legality and Traceability Verification (TLTV) under the Societe Generale Surveillance (SGS). The Bill in its current form does not guarantee that these third party certifications, country initiatives or management schemes will be enough to prove legality.

Hence, we believe that the Bill does not mandate that compliance with third party certification scheme or other external risk assessment mechanism as sufficient to satisfy due diligence requirements. Non-compliance with the due diligence requirements constitute a separate offence to the importation and processing of illegally logged timber. This will create a multi-layered measure which does not necessarily recognize certification schemes or management schemes as sufficient to meet the due diligence requirements.

PNG recommends that the compliance with due diligence requirements should not be considered to constitute an offence in its own right, but be included as part of the greater offence of negligently importing illegally harvested timber to indicate negligence, nevertheless, all to be decided by the courts.

Part 4 – Monitoring, Investigation and Enforcement

Acknowledging our membership in the WTO, it is important to mention that such measures must be applied in a non-discriminatory manner in that such is not applied in an arbitrary manner to distort trade. PNG believes the legislation is attempting to reduce the intensity of illegally logged timber through regulating imports that are harvested and processed in such manner. Furthermore, being mindful of WTO requirements and obligations, PNG hopes the requirements and measures of the proposed Bill will also be imposed on domestically produced and obtained products, hence, meets the provision of GATT Article III on National Treatment.

Another related issue is on imports of furniture by Australian importers from third parties who are importers of PNG logs and timber. The question relates to how does the Bill deal with these exporters?

PNG proposes that the Australian enforcement officials engage formally with PNG officials at a bilateral level and establish long-term programs where these officials and industry representatives meet to develop appropriate mechanisms that will provide confidence about legality of imports in ways that respects each other's national sovereignty and aim to produce collaborative solutions to the problem of illegal logging/timber where it occurs.

Conclusion

PNG recommends that:-

- (i) More organized consultations be held with trading partners particularly the developing countries on the proposed legislation, and the implications of such domestic legislation under international laws such as the World Trade Organization (WTO) and other international organizations these trading partners are members of; and
- (ii) Illegal logging/timber issue to be raised and discussed as an issue under other bilateral arrangements that PNG and Australia have such as the meetings of the Economic Cooperation Treaty (ECT), PNG – Australia Ministerial Forum and the PNG-Australia Business Council Forum.