



Submission No 9

Inquiry into Illegal Logging Prohibition Bill 2011

Name: Mr Andrew McEwen
President

Organisation: New Zealand Institute of Forestry (NZIF)
PO Box 10 513
The Terrace
Wellington 6143
New Zealand

1 May 2012

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
Department of House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

By email to: jscfadt@aph.gov.au

ILLEGAL LOGGING PROHIBITION BILL 2011

Contact details for this submission are:

Submitter: New Zealand Institute of Forestry - Te Pūtahī Ngāherehere o Aotearoa Incorporated

Address: New Zealand Institute of Forestry
PO Box 10 513
The Terrace
WELLINGTON

Submitted by: Andrew McEwen FNZIF
President

Contact: Andrew McEwen
NZIF President
president@nzif.org.nz
Ph: (04) 476 6163
Mobile: 0274 733 262

New Zealand Institute of Forestry
PO Box 10 513
The Terrace
Wellington 6143
New Zealand

Phone (04) 974 8421
Email admin@nzif.org.nz
www.nzif.org.nz

INTRODUCTORY COMMENTS

1. Thank you for the opportunity to submit on the Illegal Logging Prohibition Bill 2011 (the Bill).
2. The New Zealand Institute of Forestry (NZIF) strongly supports the intent of the Bill to prevent the trade of illegal timber products both nationally and internationally.
3. However, the NZIF does have concerns about the mechanism being used and some potential unintended consequences should the Bill be enacted in its current form.

ABOUT THE SUBMITTER

4. The New Zealand Institute of Forestry (NZIF) was founded in 1927 and has 880 members who are the individual professionals in forestry. Its object is to be an independent advocate for forestry and to provide services and support to members, the profession and the general public. NZIF is committed to serving the practice of forestry and the wider community through education, accountability and its code of ethics and performance standards. Increasingly it fulfils a quality assurance role, setting the benchmark for professionalism and the quality of advice and practice by which members and others in the profession are measured.
5. NZIF members are concerned with the professional management of all forests, plantation and natural, conservation, protection and commercial. They can be found in forestry companies, consulting businesses, research institutes, educational facilities, government departments and providers of specialist services. The members' qualifications and areas of expertise reflect the diversity of disciplines involved in managing a modern forest resource from traditional forestry degrees through science, economics, law, microbiology, hydrology, engineering and resource management. The NZIF operates the scheme that controls the registration and conduct of forestry professionals, including consultants who provide forestry advice to the public.

SUBMISSION

6. The NZIF submits that:
 - 6.1. The definition of "illegally logged" is difficult to interpret and arguably unnecessarily broad;
 - 6.2. Interpretation of the definition appears to be left to individual importers and their due diligence processes. This could lead to significant variation in application, depending on the risk perception and access to information of individual importers;
 - 6.3. The lack of definition of "regulated timber products" (until prescribed in regulations) adds to the difficulty of interpreting the definition of "illegally logged" and to the development of due diligence processes between importers and their exporting counterparts in other countries;
 - 6.4. The issues in paragraphs 6.1 to 6.3 above may result in the application of differential treatment of imported products between different countries and suppliers;
 - 6.5. The legislation may have unintended impacts on the overseas aid programmes of Australia and other countries (whether by governments or NGOs) which are directed at improving the standards of forestry in developing countries.

Definition of illegally logged

7. The Bill's definition of "illegally logged" is "harvested in contravention of the laws in force in the place (whether or not in Australia) where the timber was harvested".
8. The NZIF has given considerable thought to this definition and what it might mean if applied in New Zealand. Some interesting issues arise. We discuss these as a way of highlighting issues that might arise wherever the definition has to be applied. While we note that there is an inference in the Bill that it is compliance with laws relating specifically to logging and forest management that are of interest, we are not sure how restrictive or inclusive this might be.
9. New Zealand has two main pieces of legislation that control whether or not trees can be harvested and the conditions that will apply.
10. The Resource Management Act 1991 applies to land use. It is administered by Regional and District Councils through Regional and District Plans. In some regions/districts harvesting of trees may be permitted without further approval, whereas in others a resource consent must be applied for and issued and this may prescribe conditions that must be met. The conditions usually relate to matters such as impact of harvesting on water quality and soil erosion. They may also require that the harvested land be replanted and may impose conditions on replanting such as set-backs from streams or property boundaries.
11. The Forests Act 1949 imposes conditions on natural (indigenous) forests and requires that an approved sustainable management plan or permit must be in place for the forest being harvested. The intent of this legislation is maintenance of the forest and to restrict harvest to individual tree or small coupe harvesting (a form of management generally known as continuous cover forestry).
12. So in the case of these two pieces of legislation, failure to hold a required resource consent or to have an approved sustainable management plan or permit could be regarded as giving rise to timber harvested in contravention of the laws of New Zealand.
13. But what happens when a resource consent or approved plan or permit is in place and the conditions are breached? For example if allowable cut is exceeded in a natural forest or conditions for harvesting near a stream are breached. Such situations are thankfully rare and dealt with through the compliance and penalty provisions of the applicable legislation – so while they are breaches of the relevant legislation, does the fact that they are dealt with through the judicial system in New Zealand have any bearing on the way the Australian legislation will operate? If the products arising from the harvesting are still regarded as illegal by the Australian government, we seem to have a situation where the owner of the trees has potentially been penalised twice – once through New Zealand legislation and once by the fact that the timber cannot be exported to Australia.
14. The situation becomes more complicated when breaches of a resource consent or approved plan or permit only occur sometime after the harvest – for example a failure to meet replanting obligations after harvesting may not become apparent for two or more years after harvesting, by which time the timber or products produced from it are in service, possibly in several countries. Does this make those products illegally imported into Australia?
15. The next situation is what happens when a resource consent or approved plan or permit has not been obtained but there has been subsequent action. Failure to obtain a resource consent, when identified, will result in prosecution under the Resource Management Act.

If found guilty, the forest owner or manager will be penalised. Will the act of prosecution change the status of the timber from illegal to legal under the Australian legislation?

16. Illegally harvested timber under the Forests Act can result in prosecution of those responsible for the harvest and seizure of timber. Once seized, there are provisions for the government to sell the seized timber. So while the harvesting was clearly illegal, is the timber from the harvesting still illegal (under the proposed Australian legislation) when it is sold by the New Zealand Government?
17. Apart from the Resource Management and Forests Acts, there are many other pieces of legislation that might have some bearing on forest harvesting. These include the Health and Safety in Employment Act, the Income Tax Act, the Land Transport Act, the Climate Change Response Act (which can require replanting of harvested forest) and others.
18. Our question is whether contravention of such laws by those involved in a harvesting operation makes the timber “illegally logged”. Examples might be the truck transporting the timber that exceeds weight limits or the harvesting company that has not made its tax payments. Such breaches will, if known, result in prosecution in New Zealand of those responsible. If not known in New Zealand, they are unlikely to be discoverable by an Australian timber importer. However, it would seem unusual if breaches of legislation of a more general nature could make timber imports to Australia illegal, without also affecting imports of non-timber products.
19. In summary, we believe that even for a country like New Zealand, which is not generally included amongst those that allegedly conduct illegal logging practices, it will be very difficult to interpret the definition of illegally logged in the Bill.
20. The NZIF suggests that one way to resolve this issue is for the Australian Government to work with the governments of those countries exporting timber products to Australia to develop a specific and limited definition of “illegally logged” for that exporting country. A clear statement from the government of each country acceptable to the Australian Government would provide certainty to both exporters and importers.
21. Such a statement would need to specify the applicable laws and whether there are processes by which the definition of the wood product can be changed from illegal to legal.

Regulated Timber Products

22. The section above covered definition of illegal (or legal) logging. The next issue is when we move from raw log to a processed product. The exporting country is going to need a “chain of custody” process for tracking the raw log and any fibre products it might be turned into through processing and manufacturing to the “regulated timber product” that might be imported into Australia.
23. The Bill provides that the definition of regulated timber products will be specified in regulations and we understand that this may not happen until some time after the Bill is enacted. This makes it difficult to consider the implications of including or excluding certain products from that definition.
24. For a country where all regulated timber products (including raw logs) are manufactured in the exporting country from trees harvested in that country, there should not be too much difficulty once an acceptable definition of what is legal in the exporting country has been specified. However, when timber and/or timber products from other countries are incorporated into those products, the situation is more problematic.

25. Again using the New Zealand situation, each exporter will presumably have to disclose to the Australian importer whether or not the exported product has any imported (to New Zealand) content and if that imported content did or did not originate from timber harvested in contravention of the laws of the country where that timber was harvested. This implies that each country that exports timber products to Australia, must have legislation in place that effectively mirrors the Australian legislation and that deals with the timber products that it imports from other country.
26. To take one example of the difficulties that could arise, we are advised that regulated timber products might include paper packaging in use. Some New Zealand companies manufacture cardboard packaging that protects other (non-timber) products exported from New Zealand to Australia. This packaging frequently includes recycled content, being made from recycled paper arising from collections from residents of New Zealand cities and towns. That material could itself include recycled paper sourced from almost anywhere in the world. The difficulty of tracking which countries contributed timber to the fibre in that recycled paper and whether the harvesting of that timber met the laws of the originating country could be insurmountable.
27. The NZIF submits that finding a workable definition of regulated timber products will be extremely difficult.

Role of Australian Importers

28. The Bill places responsibility on the Australian importer to ensure that the timber products they import do not contain any illegally logged timber. This appears to require the importer to have complete information about the country of origin of any timber incorporated into any regulated timber product that they import, including the country of origin of any material that might have originated from a harvesting operation in a third country and then been imported to the country from which the product was being imported to Australia was manufactured.
29. If all the countries of origin can be determined, then the importer will need to understand what is considered to be illegally logged in each of those countries (which may mean understanding the language in which the legislation is written) and how to track whether any of the product being imported to Australia came from any illegally harvested timber. We note that the Explanatory Memorandum for the Bill estimates that timber products imported to Australia originate from 85 different countries¹, demonstrating the difficulties that an importer might face.
30. The NZIF is concerned that Australian importers may take an easy option of restricting imports from countries where they understand the language and where they assess the risks of importing an illegal product to be negligible or very low. This may be considerably fewer than the countries from which imported timber products currently arise. This is a form of trade barrier based not on the legality or otherwise of the timber products, but purely on the understanding and risk assessment made by individual timber importers, faced with a possible five-year jail term if they get it wrong.
31. If the importers do take this sort of approach, then it could adversely impact on individual forestry operations in timber exporting countries, including those of small operators and community projects that are meeting the necessary standards and for whom the income is critical for their livelihoods. This would be an unfortunate impact of the legislation.

¹ Illegal Logging Prohibition Bill 2011, Explanatory Memorandum, page 11.

Potential conflict with aid and assistance programmes

32. The final issue we wish to raise relates particularly to the role of the importers, discussed above. Both Australian and New Zealand governments undertake aid programmes in Pacific countries, some of which involve assistance in forestry operations and in countries that have been included in those alleged to conduct illegal forest operations.
33. In 2011, NZIF hosted the four-yearly joint conference of the Australian Institute of Forestry (IFA) and the NZIF in Auckland, New Zealand. The theme of that conference was Pacific Forestry. The NZIF, with generous assistance from a number of sponsors including the Australian and New Zealand Governments, the Food and Agriculture Organisation of the United Nations, the Commonwealth Foundation and the Commonwealth Forestry Association (CFA), was able to provide financial assistance to around 20 delegates from a number of Pacific Island countries. The conference passed a twenty point recommendation addressed to the IFA, NZIF and CFA asking them, amongst other things, to provide greater support for forestry professionals in Pacific countries.
34. NZIF has already taken a number of steps to implement the recommendation within the resource constraints of a member funded professional association. The IFA is involved in other actions. Both the IFA and NZIF have been approached by the Association of Foresters of Papua New Guinea seeking assistance in strengthening the governance and standards of the Association. Both IFA and NZIF are receptive to these approaches and are keen to assist.
35. The NZIF and New Zealand's Volunteer Service Aboard have also been discussing ways in which we might collaborate on forestry projects in Pacific countries.
36. We would be very concerned if the Bill did result (for the reasons expressed in paragraph 30 above) in Australian importers of timber products effectively by-passing imports from the countries in which the Australian and New Zealand Governments and those country's professional associations were providing assistance with forestry standards. It would seem like a case of "on the one hand we will help you raise your standards, but on the other hand our legislation is potentially going to penalise you anyway".

The European Union approach

37. Rather than the approach being taken under the Bill, the NZIF prefers the approach of the European Union. We understand that the EU's FLEGT (Forest Law Enforcement, Governance and Trade) action plan is aimed at providing support to timber-producing countries such as activities to promote trade in legal timber, promoting public procurement policies, supporting private sector initiatives, and safeguards for financing and investment. The support for countries includes improving governance and developing reliable verification schemes, capacity building, support for community based forest management, etc. This is formalised through Voluntary Partnership Agreements (VPA) between the EU and the governments of individual countries.
38. So rather than just imposing a ban on some broad definitions and assigning the liability for observing the restrictions on the importers, which appears to be the approach set out in the Bill, the EU is actively working with the governments of timber producing countries, understanding their processes, identifying the problem areas and then working with the country to improve the situation. The VPA approach takes account of differences between countries in forest governance, forest related legislation, the nature of the forest and land rights, the nature of the timber trade, current sector initiatives and the capacity to

implement agreements. There can be a significant aid component in exchange for being able to assure EU consumers of the legality of imported timber products.

39. According to the FLEGT website², imports to the EU from a country with a VPA are considered legal and there are ratified VPAs between the EU and Ghana, Republic of Congo, Cameroon and the Central African Republic. Countries in negotiation are Malaysia, Indonesia, Liberia, Republic Democratic of Congo, Gabon and Vietnam.
40. The FLEGT approach appears to offer the opportunity for those countries that are making an effort to improve standards to gain some benefit from improvements, even if not perfect. This is in contrast with the more rigid approach in the Bill that you either meet the requirements or you don't and there are no marks for trying.

Possible alternative approach

41. The NZIF would like to suggest that an alternative approach could be for the Australian Government (preferably in association with the New Zealand Government) to see how they might support the forestry sector in those countries (particularly amongst our near neighbours) seen as most likely to be involved with illegal logging activity and who trade with Australia (and New Zealand). This approach could:
 - 41.1. supplement rather than potentially conflict with the provision of aid assistance to those neighbouring countries;
 - 41.2. overcome the issue of importers not making an effort to understand the laws and processes in countries they are not familiar with;
 - 41.3. enable credit to be given for progress towards resolving identified issues;
 - 41.4. ensure that forestry operations that do achieve required standards (including community projects) are not disadvantaged by being "tainted by association" with other operations in the same country that do not meet acceptable standards.

Concluding Comments

42. In preparing this submission we have consulted with others in the forestry sector in New Zealand. We have also been in contact with the Institute of Foresters of Australia, which has advised that the points we have made in this submission are similar to their concerns.
43. We would be happy to provide further clarification of our submission should this be helpful to the committee. Options could include the preparation of written responses to questions posed or making oral submissions if the committee's processes provide for that.



President

New Zealand Institute of Forestry

² http://ec.europa.eu/europeaid/what/development-policies/intervention-areas/environment/forestry_intro_en.htm



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7th ANZIF CONFERENCE

Auckland, New Zealand, 2-4 May 2011

CONFERENCE RECOMMENDATION

The delegates to the 7th ANZIF Conference recommend that the New Zealand Institute of Forestry (NZIF) Te Pūtahi Ngāherehere o Aotearoa Incorporated (“NZIF”), the Institute of Foresters of Australia (“IFA”) and the Commonwealth Forestry Association (“CFA”), in collaboration with representatives from other Pacific countries:

1. Promote the recognition of timber as a forest product essential for society;
2. Promote an understanding that forests and society are intimately linked;
3. Advocate that forests be managed for the full range of goods and services that they can provide, and that this management be undertaken within a broader context of landscape management;
4. Promote recognition that forest conservation is a form of forest management and that protected areas need to be managed, monitored and reported on under the principles of sustainable forest management;
5. Promote the environmental benefits that arise from the use of wood from sustainably managed forests relative to many non-forest materials;
6. Recognising the vulnerability of some small island states to climate change, promote global policies that enable forests and wood products to make their full potential contribution to climate change mitigation and adaptation;
7. Express the concern of the conference that in some countries (such as the Solomon Islands), governance and market failures leading to unsustainable logging are depleting a vital forest resource and that this could lead to adverse effects on the economies of those countries;
8. Facilitate and support the establishment of forestry associations where there is a desire for these to be formed;
9. Establish a network of forestry professionals in the Pacific region that will work towards furthering the interests of professional forestry and forestry professionals, including those working for environmental and other government and non-government organisations and entities;
10. Facilitate exchanges of personnel and experience between Pacific countries, including the development of mentoring networks and opportunities for practical on-the-job

training;

11. Promote the development and use of professional standards including codes of ethics;
12. Promote greater cooperation between forestry sector training and education bodies at all levels (vocational, technical and university) in the Pacific region;
13. Advocate for greater professional forestry input into all levels of government decision making that might affect forests or forestry, including at the international level;
14. Advocate for the participation of all affected people, especially minorities, in forest development and management;
15. Advocate for the promotion of the social, cultural and economic interests of indigenous peoples and landowners;
16. Promote the need for greater awareness of the finance available for forestry and advocate for greater financial assistance for forestry projects in the Pacific region;
17. Advocate for enhanced investment and collaboration in forestry research and development undertaken by Australian, New Zealand and other institutions in the Pacific region;
18. Promote the need for timely, reliable and transparent forestry and tenure data and information throughout the Pacific region;
19. Approach the Australian and New Zealand governments, the Commonwealth of Nations and others for financial support for forestry professionals through existing programmes;
20. Ensure that the Presidents of the NZIF and IFA and the Chairman of the CFA report back within twelve months to the delegates at this conference on progress with the matters included in this recommendation.

Auckland, New Zealand
4th May 2011