



# Submission No 22

## **Inquiry into Illegal Logging Prohibition Bill 2011**

### Supplementary Submission

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**Supplementary Submission from Canada to the Trade Sub-Committee of the  
Joint Standing Committee on Foreign Affairs, Defence and Trade  
regarding Australia's Illegal Logging Prohibition Bill**

Canada appreciates the opportunity to supplement its previous submissions to the Trade Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade (Sub-Committee) as part of the inquiry into Australia's Illegal Logging Prohibition Bill. Canada provided written comments to the Sub-Committee on May 2, 2012, and participated in the public hearings on May 9, 2012.

During the May 9<sup>th</sup> public hearing, the Sub-Committee indicated that it would be interested to receive additional input from participating countries on two issues:

1. residual concerns on how the legislation might affect trade; and
2. evidence of the effect of the introduction of the US *Lacey Act* amendments on trade.

Consequently, Canada is providing the following additional commentary on the reliance on third party certification schemes for due diligence and the effects of the application of the US *Lacey Act* to Canadian forest product exports.

**1. Residual concerns on how the Illegal Logging Prohibition Bill might affect trade:  
Recognition of third party certification schemes**

Canada is concerned that third party certification schemes may be too heavily relied upon as the means of addressing the due diligence requirements set forth in the Bill, to the exclusion of other approaches for meeting the due diligence requirements. Although Australia's Department of Agriculture, Fisheries and Forestry (DAFF) is on record during the May 9<sup>th</sup> hearings indicating that specific certification schemes or levels of certification will not be mandated as part of the due diligence requirements, it was suggested by members of the Sub-Committee during the hearing that certification would be used by importers as a strong component of due diligence.

In Canada's view, chain-of-custody certification should be one among several mechanisms used to demonstrate the traceability of forest products. Another factor to consider when discussing certification and proof of legality is that not all manufacturers are or can be chain-of-custody certified. Relying upon chain-of-custody certification as proof of legality could present a barrier to trade for many smaller producers or those exporting complex products.

## 2. Effect of the introduction of the US *Lacey Act* on Canadian forest product exports

As the United States' largest trading partner, Canada has had more experience than any other economy in dealing with the import declaration requirements imposed by the 2008 *Lacey Act* amendments. To provide some context for the importance of the US market to Canadian exporters, in 2011 the value of Canadian forest product exports to the US was approximately \$16 billion (61.5% of Canada's total forest product exports).

Since the expansion of the *Lacey Act* import declaration requirements to plant and plant products, Canadian exporters have expressed concerns that this requirement has caused disruptions and imposed millions of dollars in new compliance costs. Of the thousands of import declarations received by the US Animal and Plant Health Inspection Service (APHIS) each month, it is estimated approximately 90% are filed by Canadian exporters. Each import declaration represents an incremental cost for these exporters who must complete, reconcile, match and store the declaration information for every shipment destined for the US. As a result, despite Canada's negligible risk for exports of illegal forest products – due to world-leading forestry practices and regulatory regimes – Canadian exporters are disproportionately affected by the legislation.

Canada has filed seven official comments with APHIS since the introduction of the *Lacey Act* amendments in 2008. Some of the comments submitted by Canada in the earlier submissions have been addressed by APHIS through the rule-making process (implementing regulations). In its most recent submissions to APHIS in April and August 2011, Canada has focused its comments on the following issues:

- The United States should adopt a risk-based approach, focusing regulatory and enforcement efforts on imports from regions where there is a demonstrable risk of illegal harvesting.
  - Due care requires a prior knowledge of which countries of harvest exhibit a high risk of illegal plant/wood harvesting. The current implementation of the *Lacey Act* does not equip importers with prior knowledge that differentiates high-risk from negligible risk countries, which is necessary for exercising responsible sourcing.
  - In light of the intended purpose of the import declaration, Canada questions 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 wood was harvested in a country with negligible risk, additional information on the import declaration no longer contributes essentially to advancing the objectives of the legislation.
  - Canada proposes that APHIS, in reconsidering the rules for the import declaration, make reference to the development of a database indicating those countries that, by a determined process of risk assessment, are recognized as having effective legislative supervision and providing adequate assurance of the legality of their forest products. Such a database could be developed and

maintained in partnership with other countries committed to combating illegal logging.

- The current *Lacey Act* import declarations in effect divert enforcement and regulatory resources from countries of high risk to countries of negligible risk.
  - Among the products covered by the import declaration, the United States imports a significant portion of the Chapter 44 products from Canada. For example, in 2010, the United States imported US\$4.37 billion worth of products covered by the import declaration from Canada, accounting for 46% of total U.S imports in these products.
  - Canada's commitment to sustainable and legal forestry is recognized worldwide; the risk of illegally logged wood originating from Canada is negligible. Nonetheless, a large portion of the U.S. imports of Chapter 44 products subject to the import declaration come from the country that has one of the lowest risks of illegal harvesting.
- The import declaration is an unnecessary burden on legitimate commerce and on regulators.
  - Industry estimates indicate that *Lacey Act* import declaration requirements cost Canadian suppliers of U.S. imports an extra CAD \$7 per shipment. This accounts only for the time to fill out the form and not the collection of required information or the initial cost to businesses of setting up their internal administrative systems.
  - Given that an average of close to 183,000 shipments of legally harvested Canadian softwood lumber cross the Canada-U.S. border each year, the annual cost of compliance is substantial.
  - There is a significant opportunity for APHIS to reduce its administrative costs and maximize its resource effectiveness by reconsidering its approach to collecting the information it needs via the import declaration form.
- Development of an exception for shipments containing minimal amounts of plant material
  - Canada supports the development of an exception from the *Lacey Act* declaration requirement for products containing minimal amounts of plant material. Given varying norms across different products and industries, Canada encourages APHIS to devise industry-specific de minimis thresholds that are based on thorough consultations with industry stakeholders to determine the appropriate exception or exceptions, taking into account specific industry realities and practices.
- Declaration requirement for goods with composite plant materials
  - Canada agrees that identification of the genus and species of all plant content in a composite plant material can be very difficult, if not near impossible, and

often prohibitively expensive. It would be extremely difficult for manufacturers of composite wood products purchasing inputs from multiple suppliers and mixing these inputs in the production process to retrace the genus and species of each input contained within these products.

- Furthermore, reporting information on genus and species on the import declaration for composite wood products that originate from Canada does not further the objective of combating illegal logging; Canada's effective enforcement of forest legislation assures the legality of forest products originating from Canada.
- Treatment of recovered, re-used and recycled plant materials
  - A requirement for the declaration of re-used products would not further the goals of the *Lacey Act* in combating illegal logging. Recovery, re-use and recycling of wood and paper products plays an important role in environmental protection by extending the service life of forest products, thereby reducing waste and greenhouse gas emissions.
  - In Canada's view, requiring a declaration for re-used products could effectively limit the importation of such products into the US and could reduce demand for and provide a disincentive to recycling in the US that would be detrimental for the environment and the objectives of the *Act*.
- Use of species groups or trade names
  - Canada supports APHIS' approach on the use of species groups or trade names when such products are comprised of multiple species originating from the same geographic areas and when the species themselves are sufficiently similar as to make their individual identification either impossible or immaterial, such as:
    - SPF (Spruce-Pine-Fir) lumber species grow together in forest stands, are managed identically, and receive the same processing and handling. Individual species composition cannot be determined easily in a lumber batch.
    - Hem-Fir (Hemlock and True Firs) are grown, managed and sold together as a product group, and are indistinguishable as a finished product.
    - Northern Bleached Softwood Kraft (NBSK) pulp species are from like-managed forests and are indistinguishable as chip inputs.
  - Canada also supports further simplifying the declaration process through recognition of additional groupings.

Canada continues to be actively engaged with the US on the implementation of the *Lacey Act* amendments, and both countries continue to look for ways to reduce unnecessary restrictions on trade in legal forest products, while continuing to combat illegal logging.

**Conclusion**

Again, Canada appreciates the Sub-Committee's consideration of this supplementary submission, and looks forward to further opportunities to provide input on the elaboration of the subordinate legislation.