



NGO STATEMENT ON THE SOFTWOOD LUMBER DISPUTE SUMMARY OF RECOMMENDATIONS

1) Reduce corporate control over forest lands

- A significant portion of public forest tenures must be taken back to break up timber monopolies and to facilitate increased conservation, resolving First Nations land issues and providing tenure to a diversity of new entrants, such as small business loggers, woodlots and community forests.

2) Ensure full market value for our timber resource

- Provinces must institute regional log markets to generate accurate timber values, ensure ease of access to wood for all wood processors (particularly in the value-added sector), and provide confidence that the full value of logs is being collected.
- Sufficient volume must be required to flow through log markets to ensure truly competitive bidding (e.g., 60% of timber harvested).
- Stumpage fees must be calculated in a transparent manner, using accurate timber values from log markets and timber sales so that the full value of the wood is collected.

3) Resist calls for compensation

- In accordance with Canadian legal principles, there must be no compensation to timber companies for policy shifts necessary to ensure a fairer market.

4) Strengthen raw log export ban

- The raw log export ban must be maintained and loopholes closed.

5) Implement improved environmental measures

- Any negotiated settlement must guarantee that no roll-back of federal or provincial environmental standards will take place.
- The federal government must enforce the *Fisheries Act* to ensure adequate riparian protections, or at least ensure that provincial rules meet the standards of this Act.
- The federal government must amend its proposed *Species At Risk Act* to ensure the habitat of all species at risk is protected.

6) Recognize Aboriginal Title

- Aboriginal Title must be justly addressed as the underlying foundation for tenure and pricing reforms. These reforms must recognize the constitutionally mandated priority of aboriginal rights to forest resources after conservation concerns have been addressed, and revenue sharing agreements that recognize the economic component of Aboriginal Title.

NGO STATEMENT ON THE SOFTWOOD LUMBER DISPUTE

Canada and the United States are locked in a trade dispute over Canadian softwood lumber exports. Currently, the federal and provincial governments are seeking to reach a negotiated solution with the United States. There are serious and far-reaching consequences to any such agreement for Canadians, which could have significant impacts on who controls our forest lands, protection of wildlife and waters, and future employment and public benefits from the forest.

Environmental organizations advocate a solution to the softwood lumber dispute that addresses the economic, environmental and social problems related to forestry in Canada. The following reforms would not only solve the softwood lumber dispute, but also lead to a more innovative, ecologically sound and publicly beneficial forest sector by: reducing corporate control over forest lands, creating opportunities for new entrants, ensuring that we get full value for the forest resource and ensuring greater public participation and environmental protection in our forests.

1) Reduce corporate control over forest lands

In many areas of Canada, a relatively small group of integrated forest products companies control the vast majority of the land base through long-term licences or “tenures.” This has implications for Canadians as well as our trading partners. Because the economies of many communities are dependent on them, these companies are able to pressure governments to ease environmental protections and reduce the amount they pay for trees. The tenure system has undermined the capacity of forest-based communities to achieve ecological sustainability, economic diversity and control over land-use decisions that will affect their lives, while presenting an obstacle to the honourable resolution of aboriginal land issues.

Recommendation: A significant portion of public forest tenures must be taken back to break up timber monopolies and to facilitate increased conservation, resolving First Nations land issues and providing tenure to a diversity of new entrants, such as small business loggers, woodlots and community forests.

2) Ensure full market value for our timber resource

Although the vast majority of provincial forested land is publicly owned, Canadians do not receive the full economic rent under current stumpage policies. Provincial stumpage systems are often arbitrary, subject to manipulation by licensees and governments, and inadequately monitored or enforced. These shortcomings result in subsidies to licensees estimated in the billions of dollars. These subsidies encourage unsustainable over-cutting and result in negative impacts on transboundary and endangered wildlife.

While increasing the number of timber sales for small business loggers can play a role in establishing a fair market value for public timber, it is equally if not more important to create *actual* markets in logs for processing. Even if a range of loggers can participate in the market for harvesting rights, if these loggers can only sell their logs to a few large processors, Canadian wood product markets will remain artificially restricted to low-end goods.

Recommendation: Provinces must institute regional log markets to generate accurate timber values, ensure ease of access to wood for all wood processors (particularly in the value-added sector), and provide confidence that the full value of logs is being collected.

Recommendation: Sufficient volume must be required to flow through log markets to ensure truly competitive bidding (e.g., 60% of timber harvested).

Recommendation: Stumpage fees must be calculated in a transparent manner, using accurate timber values from log markets and timber sales so that the full value of the wood is collected.

3) Resist calls for compensation

Some companies have proposed that if there is a policy shift to promote a fairer market for timber, they should be compensated by being given more control over timber resources or cash compensation. The stranglehold that a small number of large companies has over the Canadian timber resource is, in fact, one of the underlying causes of the softwood lumber dispute. Thus, the dispute will not be resolved by strengthening their control, and any cash compensation is simply a further subsidy to the forest industry.

Recommendation: In accordance with Canadian legal principles, there must be no compensation to timber companies for policy shifts necessary to establish fair and transparent markets.

4) Strengthen the raw log export ban

There are a variety of provincial and federal laws and policies that restrict the export of raw logs. Despite these restrictions, the percentage of raw logs exported out of Canada has been increasing. Major companies, wanting to increase revenues by selling raw logs at premiums above domestic prices, advocate weakening or doing away with these restrictions.

The raw log export restrictions were intended to encourage value-added industries by discouraging large-scale export of the raw resource. Given the underdeveloped nature of Canada's value added industry, these restrictions must be maintained or strengthened to close present loopholes that undermine their effectiveness.

Recommendation: The raw log export ban must be maintained and the loopholes closed.

5) Implement improved environmental measures

Any negotiated settlement on the softwood issue must address the environmental subsidy currently in place in Canadian forestry, including a lack of adequate protection for wildlife

habitat and poor enforcement of rules that require protective buffers along the shores of Canadian waterways.

While some provinces require habitat protection in their endangered species legislation, not all provinces have such legislation. The proposed federal *Species At Risk Act* fails to include this protection, despite Canada's obligations under the UN Convention on Biodiversity and other international agreements. Transboundary endangered species, including migratory birds, are afforded extensive protections under U.S. law, but are not adequately protected under Canadian law when they cross the border.

Provincial rules also allow forestry companies to log in ecologically sensitive areas along the banks of fish-bearing streams. In BC, for example, the *Forest Practices Code* offers no legally required protections for small fish-bearing streams and direct tributaries to fish-bearing streams, which are supposed to be protected under the federal *Fisheries Act*.

Recommendation: Any negotiated settlement must guarantee that no roll-back of federal or provincial environmental standards will take place.

Recommendation: The federal government must enforce the *Fisheries Act* to ensure adequate riparian protections, or at least ensure that provincial rules meet the standards of this Act.

Recommendation: The federal government must amend its proposed *Species At Risk Act* to ensure the habitat of all species at risk is protected.

6) Recognize Aboriginal Title

Forestry reforms can be lasting solutions only if they are based on a legally and morally defensible foundation -- recognition of Aboriginal Rights and Title. Failure to recognise this constitutionally enshrined right represents a further subsidy to the forest industry. Specifically, where government action infringes a nation's Aboriginal Title, there is a duty to consult in good faith, and in some cases consent is legally required. In addition, fair compensation will ordinarily be required when Aboriginal Title is infringed.¹ Because of the constitutional requirements to address Aboriginal Rights and Title, any agreement that does not address these issues cannot be a long-term solution.

Recommendation: Aboriginal Title must be justly addressed as the underlying foundation for tenure and pricing reforms. These reforms must recognize the constitutionally mandated priority of aboriginal rights to forest resources after conservation concerns have been addressed, and revenue-sharing agreements that recognize the economic component of Aboriginal Title.

¹¹ *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010.