

National Interest Analysis

International Tropical Timber Agreement 2006

Executive Summary

1. It is proposed that New Zealand become party to the International Tropical Timber Agreement 2006 – a copy of which is attached as Annex A (the Agreement). The Agreement underpins the governance of the International Tropical Timber Organisation (ITTO), a commodity organisation of which New Zealand has been a ‘consumer’ member since 1992.¹ The Agreement is the successor agreement, and broadly similar to, the International Tropical Timber Agreement 1994 (ITTA1994). New Zealand needs to become party to the Agreement in order to remain a member of the ITTO.
2. Becoming party to the Agreement and remaining a member of the ITTO will allow New Zealand to continue to pursue a number of policy objectives particularly close to New Zealand’s national interests, including preventing illegal logging, forest certification, promoting reforestation, and promoting non-tariff barriers and subsidies. These policy objectives can be pursued in the ITTO because of its strong focus on sustainable forest management and the existence of a fund for capacity building projects.
3. New Zealand has had an above average ability to influence the international discourse on forestry issues in the ITTO.² This is due to the previous involvement of New Zealanders at high levels within the organisation and New Zealand’s reputation as a constructive and impartial member. This influence is an important reason to remain a member as the ITTO is itself a respected leader in international forestry circles and has strong connections to and influence in other forestry organisations.
4. No significant risks or disadvantages are identified that would argue against New Zealand becoming party to the Agreement.

Nature and timing of proposed treaty action

5. The Agreement’s entry into force mechanism is complex and depends on a prescribed proportion of ‘producer’ and ‘consumer’ countries holding a prescribed proportion of votes signing the Agreement by particular dates; but it is anticipated that the Agreement will enter into force on 1 February 2008, or shortly thereafter.
6. It is proposed that New Zealand ratify the Agreement as soon as possible. There are no measures that would need to be taken by New Zealand to implement the Agreement.

¹ The ITTO has two types of membership ‘producer’ and ‘consumer’.

² This conclusion was reached by an interdepartmental assessment of New Zealand’s membership of the ITTO in 2003.

7. The ITTA1994 will terminate when the Agreement enters into force (Article 46 in the ITTA1994).

Reasons for New Zealand becoming Party to the Treaty

Background

8. New Zealand has been a 'consumer' member of the ITTO, and has had representation on the International Tropical Timber Council (the Council), since 1992 under the International Tropical Timber Agreement 1983 and the ITTA1994, the current agreement governing the organisation.
9. Under its own terms, the ITTA1994 was due to expire in 2006, triggering the negotiation of a new agreement. Negotiations for the Agreement began in 2003 and concluded in the fourth round in January 2006 under the auspices of the United Nations Conference on Trade and Development (UNCTAD).
10. The Agreement is predominantly architectural and procedural in that it establishes membership of the ITTO and underpins its governance, via the Council. However, it also sets out in detail the objectives of the ITTO.
11. The Agreement is a commodity agreement but is different from most commodity agreements in two ways. Firstly, it has a strong focus on sustainable forest management; and secondly, it has a fund for capacity- building and monitoring projects to achieve this objective.
12. The ITTO has been an important international forum for pursuing New Zealand interests in the environment and forestry sectors and can continue to serve New Zealand's interests, if New Zealand becomes party to the Agreement. New Zealand's decision to become a member of the ITTO in 1992 was largely in response to requests by the forestry industry and non-governmental organisations (NGOs). Industry saw membership as an opportunity to promote mutual opportunities for temperate and tropical timber, with the objective of ensuring that temperate timber was not viewed as a competitor to tropical timber. The NGOs saw membership as a means of helping to foster sustainable forest management of tropical timber. In the time since New Zealand became a member, the ITTO has developed policy and guidelines and conducted projects that are relevant to all types of timber, in addition to increasing its focus on sustainable forest management.
13. New Zealand's membership of the ITTO was reviewed by an inter-departmental group headed by the Ministry of Foreign Affairs and Trade (MFAT) in 2003. The report concluded that the, "ITTO contributes across a broad range of government's multilateral objectives such as promoting sustainable economic growth and trade opportunities, good governance, rule of law and protection for the environment. The ITTO is the pre-eminent international organisation for broader forest and timber management issues." The report also commented that New Zealand's "ability to influence these aspects of the organisation, was rated above average to excellent in some instances." Overall, the report concluded that New Zealand should remain a

Member of the ITTO. Becoming party to the Agreement would ensure that New Zealand remains a consumer member of the ITTO.

14. The issues that the ITTO addresses and that align with New Zealand's policy objectives within the forestry sector include:
 - a. illegal logging;
 - b. increasing the focus of the timber trade on, as well as the improved management of, planted forests; and
 - c. researching and attempting to reduce non-tariff barriers and subsidies.
15. The ITTO addresses these issues by conducting market studies, and research, providing best practice guidelines, and providing training and capacity building exercises. In addition, the ITTO is one of the few international organisations that have instituted a number of practical measures to address illegal logging.³
16. The Agreement places more emphasis on the issues and policy objectives of interest to New Zealand than the ITTA1994 did. The Agreement has a stronger focus on principles of sustainable forest management, harmonisation of efforts and reporting across international organizations working on similar issues, and an enhanced framework for capacity building and technical assistance projects. This increased emphasis is expected to contribute to the achievement of New Zealand's policy objectives to have a more environmentally sustainable and economically viable international forestry industry, benefiting both the global environment and the competitiveness of New Zealand's timber and timber products industries.
17. A new element of the Agreement is the introduction of compliance mechanisms for the payment of membership fees and the provision of statistics and information. New Zealand has never had difficulty meeting these obligations in the past and therefore it is not anticipated that these compliance mechanisms will affect New Zealand. The introduction of compliance mechanisms may contribute to the achievement of New Zealand policy objectives by encouraging states that need to improve their practices in information recording and reporting to do so. Information and reporting are two tools that can contribute to improving the management of forests and tracking and identification of legal and illegal trade in timber and timber products, which in turn can contribute to the environmental and economic policy objectives of New Zealand.

Major and like-minded parties to the Agreement

18. There is strong support for the Agreement and it is expected that all current Members of the ITTO will become party to the Agreement. The United States,

³ One example of the work ITTO has completed to address illegal logging is "Best Practices for Improving Law Compliance in the Forestry Sector". The report includes a number of case studies and was produced in conjunction with the Food and Agriculture Organisation of the United Nations and released in 2005. In addition, the FAO and ITTO have held a number of regional workshops to ensure awareness of the recommendations of the report and ensure the ability of states to learn from it and adopt the recommendations.

Switzerland, Japan, and Malaysia (the third largest producer member) have already become party to the Agreement and it is anticipated that Australia will soon. Indonesia (the second largest producer member) is in the process of becoming party to the Agreement. The European Community has indicated that it will provisionally apply the Agreement from the date it enters into force. In addition, a number of states that were not members of the ITTO under the ITTA1994 have been involved in the negotiation of the Agreement and are expected to become members of the ITTO under it.⁴

Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

Advantages

19. By becoming party to the Agreement, New Zealand would remain a consumer member of the ITTO and would continue to hold its current position within the organisation and international forestry, and would continue to enjoy the benefits, influence, relationships, and information that this generates.
20. The ITTO is a highly respected and increasingly influential organisation in international forestry. As a member, New Zealand would continue to contribute to the direction and nature of this influence and benefit from it through promoting sustainable economic growth and trade opportunities, good governance, rule of law and protection for the environment. As noted above, New Zealand has had a high degree of influence at the ITTO due to personal relationships (New Zealand has held the chair for two terms) and the credibility New Zealand has as an impartial and constructive member.
21. The ITTO is one of the key international fora for the development of forest management and trade practices and principles, and the only trade organisation within the Collaborative Partnership on Forests (an arrangement of international organisations that facilitate work on the United Nations Forum on Forests). The ITTO also works with the Food and Agriculture Organisation's Asia-Pacific Forestry Commission, which is the key regional body focusing on forestry issues. This relationship increases the importance of the ITTO to New Zealand as any influence achieved in the ITTO on topics within our policy objectives has the potential to flow through to the regional level.
22. The ITTO is an important multilateral strand in New Zealand's efforts to promote sustainable forestry management practices and legal harvesting, as it is one of the only fora where New Zealand interacts regularly with African and Latin American forestry officials. In addition, the Agreement allows for the establishment of regional offices, increasing the potential for the ITTO to strengthen its presence and policies in a particular region.

⁴ The ITTA1994 had a total of 58 members (33 producer and 25 consumer). The states that were not members of the ITTO under the ITTA1994 but are expected to be members of the ITTO under the Agreement are identified in annex A and annex B of the Agreement.

23. There are a number of principles of forestry management and trade practices in the Agreement that New Zealand could potentially benefit from. For example, increasing focus on developing policies to reduce the occurrence of illegal logging and funding projects to implement these policies; the promotion of the social, economic and environmental benefits of forests resulting in a sustained or increased global forest cover; and studies on the impact of subsidies, potentially in tropical and temperate forests.
24. By becoming party to the Agreement New Zealand would send a clear signal to other state and non-state actors that New Zealand remains committed to working on policies and projects in a multilateral setting to increase the sustainable, legal and liberalised trade of forest products.

Disadvantages

25. Officials do not consider that there are any disadvantages to New Zealand becoming party to the Agreement.

Legal obligations which would be imposed on New Zealand by the treaty action, the position for reservations to the treaty, and an outline of any dispute settlement mechanisms

26. The Agreement is largely architectural and procedural. Its substantive obligations are stated broadly and are largely aspirational in nature. However, the reporting mechanisms and the ability of the ITTO to fund projects for members allows for these aspirational obligations to be measured and realised.
27. The obligations in the Agreement are commitments to support the achievement of the key objectives of the Agreement, which include promoting the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and promoting the sustainable management of tropical timber producing forests (Article 1).
28. These commitments include:
 - a. improving market intelligence and information available on sustainable forest management;
 - b. promoting sustainable forest management, including reforestation;
 - c. supporting improvements in technology related to forestry management and trade and sharing this technology;
 - d. strengthening the capacity of members to increase enforcement mechanisms;
 - e. promoting a better understanding of the contribution of non-timber forest products and environmental services to the sustainable management of tropical forests;
 - f. recognising the role of forest-dependent indigenous and local communities; and

- g. improving marketing and distribution of tropical timber and timber product exports from sustainably managed and legally harvested sources which are legally traded, including promoting consumer awareness.
29. Article 29 of the Agreement imposes two binding obligations on New Zealand, which are identical to those imposed under Article 32 of the ITTA1994. The first is to “use” its “best endeavours and cooperate to promote the attainment of its [the Agreement’s] objectives and avoid any action contrary thereto”. The second is to “accept and carry out the decisions of the Council under the provisions of this Agreement” and “refrain from implementing measures that would have the effect of limiting or running counter to them”. New Zealand has met and can continue to meet the first obligation through its sustainable forestry management practices, official development assistance country programmes, the Timber and Wood Products Procurement Policy, and by working with other states and organisations in policy development and projects that contribute to the achievement of these commitments. New Zealand has met and can continue to meet the second obligation by working with like minded members of the Council to ensure that the decisions of the Council do not run counter to New Zealand’s policy objectives.
30. Article 19 of the Agreement requires New Zealand to pay an annual contribution to the Council’s Administrative Account, and Article 27 requires New Zealand to furnish the Council with relevant information on request. These obligations are also similar to those imposed by the ITTA1994, although the Agreement contains additional provisions around enforcement of the obligations. How New Zealand meets these obligations is discussed below in the section on cost of compliance.
31. In the unlikely event that New Zealand is unable to meet an obligation under the Agreement due to emergency or other exceptional circumstances, New Zealand may request temporary relief from this obligation from the Council (Article 30).
32. Complaints and disputes are resolved by the Council (comprising the full ITTO membership) by consensus, and decisions are final and binding (Article 31).

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

33. No legislative change is required to enable New Zealand to comply with the obligations under the Agreement. New Zealand’s legislation and practices are consistent with the key commitments of the Agreement.

Economic, social, cultural and environmental costs and effects of the treaty action

34. It is difficult to assess the direct economic and environmental benefits for New Zealand of becoming party to the Agreement. To the extent that the Agreement ultimately contributes to an increasingly sustainable and liberalised global forestry industry through the activities of the ITTO, there will be economic and environmental benefits for New Zealand. For example, New Zealand’s forestry

industry and the global environment may benefit, through any reduction in the occurrence of illegal logging and avoided deforestation.

35. A recent report undertaken for the Ministry of Agriculture and Forestry highlighted the extent to which illegal logging suppresses the value of New Zealand forestry products. The report estimated that in 2008 the income for the forestry industry will be US\$178million lower than it would be in a market without illegal logging.⁵ In addition, deforestation has been identified as being responsible for approximately 20 percent of carbon emissions.⁶
36. It is unlikely that any group would be directly affected by New Zealand becoming party to the Agreement. Conversely, should New Zealand not become party to the Agreement, it would cease to be a member of the ITTO. That is likely to have an adverse affect on New Zealand's forestry industry by reducing access to information and ability to influence international discourse and policy.

The costs to New Zealand of compliance with the treaty

37. There are two economic costs that New Zealand has had as a member of the ITTO and will continue to have if New Zealand becomes party to the Agreement. The first is the compulsory membership fee, the second is resourcing New Zealand representation in ITTO activities and Council meetings, including providing information in response to requests from the ITTO. The Ministry of Agriculture and Forestry currently funds both costs out of Vote: Agriculture and Forestry. There has been no direct cost to industry or individuals in New Zealand under the ITTA1994, nor will there be under the Agreement.
38. It is not anticipated that New Zealand's representation or compliance costs will increase under the Agreement. However, the cost of membership has increased. Membership contributions under the Agreement have been increased to ensure that the core work of the ITTO is not dependent on voluntary funding. Examples of the work not covered by the membership fee under the ITTA1994 that will be included as "core operational costs" under the Agreement include the preparation and distribution of regular ITTO publications and holding regular expert panels to critically examine projects submitted to the ITTO. These costs are capped at a biennial amount of 33 percent of the "basic administrative costs".
39. The financial model agreed for the Agreement results in a maximum increase in New Zealand's current membership fees of approximately 50 to 70 percent.

⁵ *Implications for the New Zealand Wood Products Sector of Trade Distortions due to Illegal Logging*, A Report prepared for the Ministry of Agriculture and Forestry by James Turner, Andres Katz and Joseph Buongiorno of Scion, August 2007. See www.maf.govt.nz/forestry/illegal-logging/trade-distortion-implications/index.htm

⁶ *Stern Review on the Implications of Climate Change* Commissioned by the Government of the United Kingdom, 2005. See www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm

This increase is substantially less than the financial restructure proposed by some members during the negotiation. New Zealand's membership cost in 2007 was US\$26,361 and has been assessed at US\$28,888 for 2008.⁷

Completed or proposed consultation with the community and parties interested in the treaty action

40. MAF consulted the Ministry of Foreign Affairs and Trade throughout the renegotiation period and also consulted the Treasury regarding potential scenarios in the increase in membership fees.
41. MAF informed the Ministry for the Environment, Te Puni Kokiri and the Department of Conservation of the successful completion of the renegotiation of the ITTA1994 and the intention to recommend that New Zealand become party to the Agreement. In addition, MAF provided background information on the ITTO and new Agreement, as well as a copy of the Agreement. No concerns were raised by these Government Agencies regarding the submission of the Agreement for ratification.
42. MAF has contacted the Forest Industry, via the Chief Executive of the New Zealand Forest Owners Association regarding the intention to recommend that New Zealand become party to it. MAF made itself available to receive comments and answer questions. None have been raised.

Subsequent protocols and/or amendments to the treaty and their likely effects

43. The Council may, by special vote, recommend amendment of the Agreement to members of the ITTO (Article 40). Where the Council recommends an amendment, it must also set the date by which members must have notified the depository of their acceptance of the amendment. An amendment can enter into force 90 days after the depository has received notifications of acceptance from two thirds of producer and consumer members, that hold at least 75 percent of the votes of the producer and consumer members.⁸ If the required acceptances are not received by the date set by the Council, the amendment is considered withdrawn and does not enter into force.
44. Any member that does not notify the depository of its acceptance of the amendment by the date it enters into force (by majority decision) ceases to be a party to the Agreement. The Council does have discretion to extend the period of acceptance for a member in certain circumstances (Article 40(5)). If the Council exercises its discretion to extend the period of acceptance for that member, the member is not bound by the amendment until it has notified the depository of its acceptance.

⁷ New Zealand's membership fee for 2008 has been assessed under the ITTA1994. The actual level of our membership fees under the Agreement will be dependent upon the increase in the "core operational costs" budget of the organisation, the amount of tropical timber New Zealand imports, and the relative values of the New Zealand dollar, the US dollar and the Japanese yen.

⁸ Members are given a certain number of votes depending on their volume of trade in tropical timber.

45. New Zealand would consider any amendments to the Agreement on a case by case basis, and any decision to accept an amendment would be subject to the usual domestic approvals and procedures.

Withdrawal or denunciation provision in the treaty

46. Members may withdraw from the Agreement at any time after it enters into force by giving written notice to the depository and simultaneously informing the Council (Article 41). Withdrawal is effective 90 days after the depository receives the withdrawing member's notice. Any decision by New Zealand to withdraw from the Agreement would be subject to the usual domestic approvals and procedures.
47. Financial obligations to the ITTO incurred by a member under the Agreement do not terminate on that member's withdrawal (Article 43 contains provisions for the settlement of accounts on withdrawal).
48. The Council may, by special vote, exclude a member from the Agreement if the Council decides that that member is in breach of its obligations in a way that significantly impairs the operation of the Agreement (Article 42). A member ceases to be a party to the Agreement six months after the date of the Council's decision.

Ministry of Agriculture and Forestry

November 2007

Annex A

Copy of the Agreement

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