H.R. 1497, LEGAL TIMBER PROTECTION ACT

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

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LEGISLATIVE HEARING ON H.R. 1497: LEGAL TIMBER PROTECTION ACT.

Tuesday, October 16, 2007
U.S. House of Representatives
Subcommittee on Fisheries, Wildlife and Oceans
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:05 a.m. in Room 1324, Longworth House Office Building, Hon. Madeleine Z. Bordallo, [Chairwoman of the Subcommittee] presiding.

Present: Representatives Bordallo, Brown and Sali.

Also Present: Representative Blumenauer.

STATEMENT OF THE HONORABLE MADELEINE Z. BORDALLO, A REPRESENTATIVE IN CONGRESS FROM GUAM

Ms. BORDALLO. Good morning, everyone. The hearing will come to order. The Subcommittee is meeting today to hear testimony on H.R. 1497, the Legal Timber Protection Act, introduced by our colleague from Oregon, Mr. Blumenauer.

Pursuant to Committee Rule 4[g], the Chairman and the Ranking Minority Member will make opening statements. If any other members have statements they will be included in the hearing record.

H.R. 1497, the Legal Timber Protection Act, would amend the Lacey Act to make it unlawful to import any plant taken in violation of any foreign law or any product made from such a plant. Such restrictions already apply to fish and wildlife harvested in violation of foreign laws and have been used successfully by fish and wildlife law enforcement agents for decades to curb the importation of fish and wildlife harvested illegally abroad.

No such enforcement tool exists today for plants and plant products such as timber, however, unless the species is listed under CITES. As a result, a wide range of logs harvested illegally can currently be imported to the United States, and this is a problem for several reasons.

First, widespread and unsustainable illegal logging activities in developing nations throughout Africa, Southeast Asia and Latin America and are undermining governance in economic growth and development. The World Bank estimates that those countries lose more than $10 billion a year in revenues as a result of illegal logging.

Local communities, social structures and conservation efforts are also undermined as the forests that indigenous peoples and many species of wildlife rely upon for survival are wiped out by illegal

logging operations. Second, illegal logging in foreign countries also impacts the U.S. timber industry by creating unfair competition and lowering prices.

Our witnesses from the Hardwood Federation and the American Forest and Paper Association will speak more about this. Yet, as the world's largest wood products consumer and one of the top importers of tropical hardwoods, the United States may inadvertently create more incentive for illegal logging to occur to satisfy our demand.

As the Justice Department will testify, existing U.S. laws do not adequately address this particular problem. The Department and many others believe that amending the Lacey Act, as H.R. 1497 proposes to do, is a sensible way to provide the necessary additional legal authority to deter the importation of illegally harvested foreign timber, protect domestic forest businesses, reduce the incentive for illegal logging in foreign countries, and reduce the impacts that such logging is having on the people, the environment and the economy in those countries.

While I recognize that there are some concerns with the legislation today, I do think it is incumbent upon all of us to work together to resolve our differences and move legislation that will be an important tool in protecting the communities that are so devastated by illegal logging as well as our own timber industry. So I look forward to hearing from our witnesses today, and to working with you in the future to achieve progress on this important issue.

Now, as Chairwoman of the Subcommittee I recognize Mr. Brown, the Ranking Republican Member, for any statement he may have.

STATEMENT OF THE HONORABLE HENRY E. BROWN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. BROWN. Thank you, Madam Chairwoman. As owner of a small family tree farm in Cordesville, South Carolina, I have the highest respect for the men and women in this country who grow, harvest, mill, manufacture and sell timber products. Tree growers are some of our greatest conservationists. Nevertheless, there isn't one who can defend the illegal logging that may be taking place in some foreign countries.

While the United States and the government of Indonesia signed a bilateral agreement last year to fight this indefensible practice the regrettably depressed reports continue to indicate the destruction of additional forest lands. These reports indicate that millions of wooded acres are being destroyed each year and that U.S. companies are annually losing almost a half of a billion dollars in export opportunities.

This is a serious problem that will be extraordinarily difficult to solve for there are many experts who believe that we already have sufficient legal authority to stop and prosecute those who are involved in illegal logging. The authors of H.R. 1497 suggest an amendment to the Lacey Act as an alternative solution.

At the same time, there are reports that wood and wood products are being sold in this country below cost. As a free market economy we cannot tolerate the dumping of any goods, and it may be time

for the U.S. industry to file an antidumping petition with the International Trade Commission. However, the subject of today's hearing is H.R. 1497, the Legal Timber Protection Act.

During the course of this hearing I look forward to learning why the Lacey Act was chosen, why the U.S. Fish and Wildlife Service and Department of Agriculture can effectively use this statute to stop this practice, if these governmental entities have the resources to undertake this effort and why existing Federal laws are inadequate.

At the same time I want to ensure that U.S. importers who have not broken any laws are not required to hire a private investigative firm to carefully examine each chain of sales certificate and they do not risk civil and criminal penalties including prison for not intimately knowing the laws of every importing timber nation. We must include an innocent owner's legal defense.

We are all committed to stopping the spread of illegal logging into the United States. The issue is what is the best way or approach to accomplish that goal without making criminals of innocent Americans? I also find it ironic that the strongest proponent of this bill are the very same organizations who have consistently opposed legal logging in this country.

Thank you, Madam Chairman. I look forward to hearing testimony this morning.

Ms. BORDALLO. I thank the Ranking Member from South Carolina, Mr. Brown, for his statement.

I would now like to recognize our very first witness, Congressman Earl Blumenauer from the State of Oregon, the sponsor of this important legislation. Thank you very much, Congressman, for being here today and for your leadership on this issue. You may go ahead.

STATEMENT OF THE HONORABLE EARL BLUMENAUER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. BLUMENAUER. Thank you, Madam Chair, Ranking Member Brown. I deeply appreciate the Subcommittee making time on your crowded schedule to deal with this issue, and I strongly agree with the sentiments that were expressed in both your opening statements. I think you understand the problem and the opportunity that face us here today.

You know, I was not a member of a community that was actively involved in logging, but I became first involved with this issue when my son was writing a Master's degree thesis at the University of Michigan in business on illegal logging in Indonesia.

I must say that I was shocked at the detail to which he was able to document the abuse of this practice and the far reaching impact that it had not just on the environment, which we understand for threatening endangered species, these people are often involved with reckless timber harvest practices, but it undermined the fabric of a struggling democratic society, it took away resources that otherwise would have been available to people in that country and it actually harmed people in the United States because the honest timber brokers had to deal with people who were cheating.

The people who took the time to understand where the timber came from and paid a premium for having it handled properly were

undercut. It also drove down the prices in this country because we had to compete with things in the marketplace for the cheaters.

It led me on an odyssey here that ends up today with the legislation that is before you, and in fact the amendment that has been suggested because since this was first introduced we have been working with a wide variety of stakeholders to have legislation that meets the needs and meets the tests that both of you raise.

I think we ought to put in mind that we are talking about not just environmental damage overseas and undercutting indigenous societies, but it also is a billion dollar hit on the American economy for the people who don't cheat in the forest product industry. There will be testimony in a grander scale that we talk about half of the world's forests that have already disappeared and that the illegal removal of high value threatened tree species destined for international trade is often the first step toward widespread clearance.

We could have spent the entire hearing talking about how deforestation accounts for 20 percent of the annual greenhouse gas emissions, more than the entire transportation sector. The trade in illegally harvested timber undermines democratic governance, threatens, as I mentioned, the indigenous populations because the cheaters bribe, they use fraud, and in some cases, and you may have testimony about this today, extreme violence are part and parcel of the illegal traffic in timber.

I hope that we will be able in the course of this hearing to assuage your concerns that there are any problems associated with the Lacey Act in its implementation. The reason that we have introduced this bipartisan legislation is because the simple extension of the Lacey Act where we have had a century of experience shows that we have taken the least burdensome mechanism to be able to equip the U.S. Government to be able to deal meaningfully.

I think it is clear that there are mechanisms that can be used like in the seafood industry where people don't pay until it is cleared by Customs. You will find testimony here today, the vast majority of American industry wants to know where that lumber comes from. They are playing by the rules, and that simple extension of the Lacey Act is an opportunity for us to have it both ways.

We can protect the environment, we can protect American jobs and we can have something that protects the actors in American industry, both foreign products, and lumber and furniture manufacturing, that are playing by the rules. That is why you have the unusual array of people that are supporting it.

You would expect that there might be some of our environmental friends from the Sierra Club or the Defenders of Wildlife. I am proud of the fact that we have worked with people in the industry, the Sustainable Furniture Council, the Society of Foresters, the Hardwood Federation, individual companies that care deeply about this.

You also see that there are unions, Teamster, Carpenters, Steel Workers, who understand that cheaters overseas undercut American jobs here at home. As I mentioned, Madam Chair and Mr. Ranking Member, the work that we have done since the bill was first introduced has produced some changes.

We have been open to the give and take with the environmental community, with the industry, and we have a product that is avail-

able, the amended product, that I think will satisfy the needs that you both have raised. I would like to conclude by thanking particularly the American Forest and Paper Association, the Hardwood Federation and the Environmental Investigation Agency for helping us lead this process.

I deeply appreciate your courtesy and your interest. I look forward to working with the Subcommittee on putting forth a piece of legislation that can have the broad bipartisan support that it merits and that we can protect the environment, American jobs and we can reinforce people who are playing by the rules. Thank you very much.

Ms. BORDALLO. I thank my colleague, Mr. Blumenauer, the sponsor of this legislation, and I hope that you will be able to stay and join us here on the dais for the remainder of the hearing. We invite you to come forward.

I would like to recognize our panel of expert witnesses, this is Panel No. 2, to please come forward and take a seat at the witness table. And, also, for those standing in the back, if you would like, I am inviting you to come up and sit around the second layer here, the dais, right around here, if you would. Don't be shy. Please come forward. You don't want to stand through this entire hearing. Please come forward.

[Pause.]

Ms. BORDALLO. I wish to thank the witnesses who are with us on Panel No. 2 and to introduce them at this time.

Ms. Eileen Sobeck, Deputy Assistant Attorney General of the Environment and Natural Resources Division at the Department of Justice; Ms. Ann Wrobleski, Vice President of International Paper, and testifying on behalf of the American Forest and Paper Association; Mr. Victor Barringer, President and CEO of Coastal Lumber Company, testifying on behalf of the Hardwood Federation; Mr. Alexander von Bismarck, Executive Director of the Environmental Investigation Agency; and finally, Mr. Craig Forester, Vice President and General Manager of Rex Lumber Company, and testifying on behalf of the International Wood Products Association.

I thank you all for being here today, and as Chairwoman I now recognize Ms. Sobeck to testify for five minutes. I would note for all witnesses that the timing lights on the table will indicate when your time has concluded, and we would appreciate your cooperation in complying with the limits that have been set as we have many witnesses to hear from today.

Be assured that your full written statement will be submitted for the hearing record. Now, I recognize Ms. Sobeck.

[The prepared statement of Mr. Blumenauer follows:]

Statement of The Honorable Earl Blumenauer, a Representative in Congress from the State of Oregon

Chairwoman Bordallo and Ranking Member Brown,

Thank you for holding this hearing on the Legal Timber Protection Act and for the opportunity to testify.

As the experts you have scheduled will testify in greater depth, illegal logging threatens some of the world's richest and most vulnerable forests and cost the U.S. forest products industry over $1 billion every year in lost opportunities and lower prices.

Half of the world's forests have already disappeared, and the illegal removal of high value threatened tree species destined for the international trade is often the

first step leading to forest clearance. The tracks and roads built to access and remove timber become entryways for further illegal cutting, hunting and burning.

As illegal logging contributes to deforestation, the local and regional climatic systems are dramatically altered and the water balance and dynamics of this fragile ecosystem disrupted. The resulting soil erosion induces floods and landslides. In fact, deforestation accounts for 20% of annual global greenhouse gas emissions—more than the entire global transportation sector.

Trade in illegally harvested timber undermines democratic governance and threatens indigenous populations as bribery, fraud and, in some cases, extreme violence are all part and parcel of illegal timber trafficking. Moreover, it causes losses to up to $15 billion for low-income countries. By avoiding export duties, timber royalties and taxes on their profits, companies operating unlawfully are robbing national governments of millions of dollars every year.

In our domestic industry, since as much as 30% of hardwood lumber and plywood traded globally could be of suspicious origin, responsible U.S. companies lose an estimated $460 million in export opportunities every year because of displacement caused by illegally harvested timber. On top of that, the annual value of U.S. exports is between $500-$700 million lower due to downward pressure on prices from illegally harvested timber. For my home states of Oregon, that means losses of up to $150 million each year.

The United States has a number of tools at our disposal to address the problems of illegal logging from capacity building in source countries to verification through trade agreements, the use of which are not mutually exclusive. However, we have not done enough when it comes to the demand side of the equation.

Quite simply, illegal logging is timber theft and yet, unlike other kinds of theft, our government lacks the authority to prevent these illegal products from entering the United States.

For this reason I, along with Congressmen Weller and Wexler, have introduced H.R.1497, the bi-partisan Legal Timber Protection Act, which is designed to prohibit trade in illegally harvested timber in the United States. The mechanism by which is does so by extending the protections of the Lacey Act to timber and other plants.

The Lacey Act, which dates back to 1900, prohibits trade in wildlife, fish, and plants that have been illegally taken, possessed, transported or sold. In this way, Lacey strengthens and supports other federal, state, and foreign laws protecting wildlife by making it a separate offense to take, possess, transport, or sell wildlife that has been taken in violation of those laws.

What our legislation means is that, if wood has been stolen from a forest reserve in Brazil or taken without paying the appropriate royalties in Indonesia, the U.S. government will now have the authority to prevent its importation into the United States and punish those responsible.

This bill is designed to go after the worst of the worst. It asks companies to take very basic responsibility that shouldn't be a problem to any legitimate importers: know your sources and be able to document what species from what countries are you importing. Civil and criminal liability is limited only to those who don't take due diligence or those who knowingly import illegal wood. This is a free-market solution, helping companies move to more responsible suppliers, instead of requiring burdensome inspections or certifications.

When I first introduced the "Legal Timber Protection Act," earlier this year, I made clear that I was interested in working with all stakeholders to ensure that the bill which eventually emerged from the House of Representatives would be as effective as possible and not unintentionally harm legitimate businesses.

Since then, I am pleased that the work of a broad coalition of environmental and industry groups has produced a series of clarifications and changes that strengthened the original legislation. I have circulated this new text to other members of the House and it has been introduced in the Senate as S.1930. I am also including it at the end of my written statement. The changes include clarifications to the types of underlying laws that would trigger a Lacey violation and to the documentation requirements.

I hope that the Legal Timber Protection Act will be soon be marked up by this committee or otherwise pass the House. While I remain open to the continued input of involved parties, when the bill moves to mark-up (or should otherwise come to a vote) I will support the adoption of a substitute amendment containing the text agreed to by the environmental and industry groups.

I believe that our solution gets at the heart of the illegal logging issue without getting legal timber trade caught up in the net or putting over-burdensome regulations on those involved in perfectly legitimate international trade. One of the drivers of the illegal timber trade is the cost-differential between legal and illegal timber,

so we've tried our hardest to make sure that we don't impose compliance costs with a perverse impact.

I am particularly pleased by the broad coalition of industry, environmental and labor groups who both support this effort and have put countless hours into a this process, in order to ensure that our legislation would be as effective as possible. It is indeed a coalition of strange bedfellows, but by including domestic lumber producers, importers, organized labor, and the environmental community, we feel confident that we have a solution that meets the needs of all those who are involved in legitimate and legal trade. I would like to specifically thank the American Forest & Paper Association, the Hardwood Federation, and the Environmental Investigation Agency for leading this process.

I look forward to exploring the issues in this bill with you in greater detail during the course of this hearing and for your support to move this important bill forward.

STATEMENT OF EILEEN SOBECK, DEPUTY ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION, U.S. DEPARTMENT OF JUSTICE

Ms. SOBECK. Thank you, Chairwoman Bordallo, Representative Brown, members of the Subcommittee. Thank you for inviting the Department of Justice to testify about H.R. 1497, the Legal Timber Protection Act, which would amend the Lacey Act to extend its protection to plants including timber illegally harvested outside of the United States.

The administration supports the general approach of this legislation and would be pleased to have this added authority to address the problem of importation of illegal timber and timber products so as to further implement the President's initiative on illegal logging.

I am a Deputy Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice. The Environment Division is responsible for representing the United States in litigation involving environmental and natural resources statutes including enforcement cases against individuals or entities that violate those statutes.

Among the statutes that the division is responsible for enforcing is the Lacey Act. We work closely with several other Federal agencies in enforcing the Lacey Act including the Department of the Interior's Fish and Wildlife Service, the Department of Commerce, Department of Agriculture and Department of Homeland Security.

First enacted in 1900, the Lacey Act is the United States' first major national wildlife protection statute. The current version of the Lacey Act, which includes significant amendments made in 1981 and 1988, is an anti-trafficking statute and provides broad protection with respect to fish and wildlife.

A unique feature of the Lacey Act is that it allows us to prosecute persons who import wildlife into the United States that has been taken, possessed, transported or sold in violation of a foreign law or regulation. The Lacey Act's assimilation of foreign laws is not an effort to police other countries.

Rather, our assimilation of such laws is designed to reduce demand in the United States for species poached in foreign countries and to encourage international cooperation and mutual reciprocal enforcement efforts. While the Environment Division has brought many successful cases to prosecute violations of the Lacey Act's provisions protecting fish and wildlife, in its current form the Act provides only very limited coverage and limited enforcement tools with respect to timber or other plants.

As you have already heard, illegal trafficking in timber and timber products has been demonstrated to be a major problem for both domestic and international interests. Illegal logging destroys forest ecosystems, deprives national governments and local communities of needed revenues, undercuts prices of legally harvested forest products on the world market, finances regional conflict and acts as a disincentive to sustainable forest management.

The administration through the President's initiative against illegal logging has made it a priority for the United States to curb trafficking and illegally logged timber. Under President Bush's direction to reduce illegal logging abroad the administration has been evaluating existing domestic laws to determine their adequacy as tools to stem this importation of illegally harvested foreign timber and timber products made from illegal timber.

Based on our review, we believe that existing U.S. laws do not adequately address the problem. As you have noted, we believe that amending the Lacey Act is a sensible way to provide the necessary additional legal authority that would serve to deter the importation of illegally harvested foreign timber, protect domestic forest businesses and advance the President's initiative against illegal logging.

While we support the general approach of amending the Lacey Act, the administration has identified a few concerns with the bill. For example, under the proposed legislation the definition of plant is very broad. It could indeed encompass items such as wooden shipping containers and packing materials made from paper and cardboard, and I think the focus of our concerns is on timber and timber products.

But we look forward to continuing to work with the committee and with all the others who are testifying here today in what has already been a cooperative and collegial effort to come up with a solution that will address a problem that we all acknowledge needs to be addressed. I welcome the opportunity to be here today.

Ms. BORDALLO. Thank you very much, Ms. Sobeck. Now, I recognize Ms. Wrobleski to testify for five minutes.

[The prepared statement of Ms. Sobeck follows:]

Statement of Eileen Sobeck, Deputy Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice

INTRODUCTION

Chairwoman Bordallo, Representative Brown, and Members of the Subcommittee, thank you for inviting the Department of Justice to testify about H.R. 1497, the "Legal Timber Protection Act," a Bill to amend the Lacey Act to extend its protections to plants, including timber illegally harvested outside of the United States.

I am a Deputy Assistant Attorney General of the Environment and Natural Resources Division (Environment Division), U.S. Department of Justice. The Environment Division is responsible for representing the United States in litigation involving environmental and natural resource statutes, including enforcement cases against individuals or entities that violate those statutes. The Environment Division has a docket of about 7,000 pending cases or matters, with cases in nearly every judicial district in the nation. We litigate cases arising under more than 70 different environmental and natural resources statutes.

Among the environmental statutes that the Environment Division is responsible for enforcing is the Lacey Act, discussed in more detail below. While the focus of this testimony is the Environment Division's role in criminal prosecution of Lacey Act violations, I should add that a number of other federal agencies are involved in the implementation of the Lacey Act, including the Department of the Interior's

U.S. Fish and Wildlife Service, the Department of Commerce, the Department of Agriculture, and the Department of Homeland Security.

While the Environment Division has brought a number of cases to prosecute violations of the Lacey Act's provisions protecting fish and wildlife, in its current form the Act provides limited coverage and limited enforcement tools with respect to timber or other plants.

As I explain in greater detail herein, illegal trafficking in timber and timber products has been demonstrated to be a major problem for both domestic and international interests. The Administration has made it a priority for the United States to do its part to try to curb trafficking in illegally logged timber. Under President Bush's direction to reduce illegal logging, the Administration has been evaluating existing domestic laws to determine their adequacy as tools to stem the import of illegally harvested foreign timber and timber products. Penalties on illegal imports applied by the U.S. would provide additional deterrence and additional protection to forest ecosystems overseas and U.S. forest businesses. Based on our review, we believe that existing U.S. laws do not adequately address this problem. We believe that amending the Lacey Act is a sensible way to provide the necessary additional legal authority that deters importation of illegally harvested foreign timber, protects domestic forest businesses, and advances the President's Initiative Against Illegal Logging.

We appreciate and applaud the cooperative and collegial efforts of many of those testifying today and others in the timber industry and conservation community regarding this legislative issue. While we support the general approach of amending the Lacey Act, the Administration has identified a number of specific concerns with the language in H.R. 1497. We believe that those concerns, discussed further below, warrant further discussion.

PRESIDENT'S INITIATIVE AGAINST ILLEGAL LOGGING

Our support for greater protections and enforcement tools with respect to plants, including timber, is fully consistent with the Administration's efforts to combat illegal logging internationally. In February 2002, President George W. Bush directed the Secretary of State to develop an initiative against illegal logging. The following year then Secretary of State Colin Powell launched the President's Initiative Against Illegal Logging (the President's Initiative, or PIAIL) as a framework for action to assist developing countries to combat illegal logging, the sale and export of illegally harvested timber, and corruption in the international forest sector. By illegal logging, we are referring to timber that is harvested, transported, processed, or sold in contravention of a country's laws. Illegal logging destroys forest ecosystems, deprives national governments and local communities of needed revenues, undercuts prices of legally harvested forest products on the world market, finances regional conflict, and acts as a disincentive to sustainable forest management. International trade in illegally harvested timber creates economic incentives for those who violate the law, and thereby increases the magnitude of the problem.

The World Bank [see "Strengthening Forest Law Enforcement and Governance, Report No. 36638-GLB, August 2006] estimated in 2006 that timber harvested illegally worldwide on public lands alone results in lost assets and revenue in excess of $10 billion annually in developing countries. That money represents funds that could otherwise be used by governments in developing countries, where much of the illegal harvesting occurs, to meet the basic needs of their people, better manage their forests and other natural resources, and reduce their international debt. In addition to the ecological damages associated with illegal logging, trade in illegal timber also hurts U.S. wood products companies.

The President's Initiative emphasizes identifying and reducing threats to protected areas and other high conservation value forests from illegal logging through four key strategies:

- **Good Governance—**Building country capacity to establish and strengthen legal regimes and enforcement of laws affecting forest management, especially those aimed at illegal logging;
- **Community-Based Actions—**Enhancing community involvement in forest governance and related wildlife issues;
- **Technology Transfer—**Developing integrated monitoring systems and building in-country capacity to monitor forest conditions and activities and compliance with laws, including using remote sensing and ground-based technologies to monitor changes in forest conditions; and
- **Harnessing Market Forces—**Promoting good business practices, transparent markets, and legal trade, including in-country capacity to implement obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Several federal departments and agencies, including the Department of Justice, as well as U.S.-based international organizations and intergovernmental agencies, have been involved in international activities to implement the President's Initiative Against Illegal Logging. The President's Initiative has included actions in Africa, Asia, and Latin America, as well as global activities beyond particular countries' borders. While I will not discuss all of these activities, let me describe some of the activities in which the Department of Justice has recently been involved.

In November 2006, the United States Trade Representative, Susan C. Schwab, signed a Memorandum of Understanding with the Minister of Trade for the Government of the Republic of Indonesia on Combating Illegal Logging and Associated Trade. The Agreement is designed to promote forest conservation by combating trade in illegal timber, and to help ensure that Indonesia's legally produced timber and wood products continue to have access to markets in the United States and elsewhere. Attorneys from the Environment Division have actively participated in the bilateral working group established under the Agreement to facilitate joint efforts by the United States and Indonesia to combat illegal logging and associated trade. In addition, the Environment Division will apply a portion of the $1 million that the United States has committed to fund projects under the Agreement to assist in training judges and prosecutors in Indonesia on methods of prosecuting crimes involving illegal timber and timber products. The workshops will focus on investigation of illegally harvested timber and related "forest" crimes in Indonesia, general crimes like money laundering applicable to illegal logging, gathering evidence, and successful prosecution of such cases. The Environment Division already provides training to judges and prosecutors in countries that are participants in the Association of Southeast Asian Nations - Wildlife Enforcement Network (ASEAN-WEN) on methods of prosecuting crimes involving trade in illegally taken wildlife and wildlife parts. This training is conducted in conjunction with the ASEAN-WEN Support Group, the U.S. Fish and Wildlife Service and several non-governmental organizations.

THE LACEY ACT—BROAD APPLICABILITY TO FISH AND WILDLIFE

As I stated previously, the Lacey Act is a key statutory tool relied on by federal prosecutors in cases involving illegal trafficking in fish and wildlife. First enacted in 1900, the Lacey Act is the United States' first major national wildlife protection statute. The current version of the Lacey Act, which includes significant amendments made in 1981 and 1988, is an anti-trafficking statute that provides broad protections with respect to fish and wildlife. The Lacey Act applies to all "wild" (i.e., non-domesticated) animals from mammals to invertebrates, whether alive or dead. It also applies to any animal part, product, egg, or offspring, even if bred in captivity. 16 U.S.C. § 3371(a). The Act's prohibitions have two "prongs": provisions relating to wildlife trafficking, both domestic and transnational; and provisions relating to false labeling, which proscribe making or submitting any false record, account, label for, or false identification of wildlife.

The first "prong" of the Lacey Act makes it unlawful (1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife already taken (i.e., captured, killed or collected), possessed, transported, or sold, (2) in violation of state, federal, American Indian tribal, or foreign laws or regulations that are fish or wildlife-related (the so-called "underlying law" or "predicate offense").[1] Together, these are referred to as the "two steps" necessary for an offense under the Lacey Act. A two-tiered penalty scheme exists, creating both misdemeanor and felony offenses, distinguished by the defendant's knowledge of the underlying law violations. 16 U.S.C. § 3373(d)(1) and (2). For a Lacey Act violation to be a felony, the defendant must "know" about, or be generally aware of, the illegal nature of the wildlife, but not necessarily the specific law violated.[2] A misdemeanor requires that the defendant "in the exercise of due care" should have known the facts constituting the underlying law violation. Felony violations, in addition to a "knowing" scienter or mens rea requirement, require either proof that the defendant "knowingly" imported or exported wildlife, or "knowingly" engaged in conduct during the offense that involved the sale or purchase of, the offer for sale or purchase of, or the intent to sell or purchase wildlife with a market value over $350.

The second "prong" of the Lacey Act prohibits the making or submitting of any false record, account, label for, or identification of any wildlife transported or intended to be transported in interstate or foreign commerce, or imported, exported, transported, sold, purchased, or received from any foreign country. A violation of

[1] 16 U.S.C. § 3372 (a)

[2] United States v. Santillan, 243 F.3d 1125 (9th Cir. 2001); United States v. Todd, 735 F.2d 146 (5th Cir. 1984).

these provisions may be prosecuted as either a misdemeanor or felony, depending upon the nature of the offense, paralleling trafficking offenses.

One unique feature of the Lacey Act is that it allows the incorporation of foreign law as an underlying law or predicate offense that "triggers" a Lacey Act violation. Not all foreign laws, however, can serve as a trigger to a Lacey Act offense—only foreign laws related to fish or wildlife.[3] A person who imports wildlife into the United States that has been taken, possessed, transported, or sold in violation of a foreign law or regulation can be prosecuted in the United States for a Lacey Act offense. The law or regulation must be of general applicability, but may be a local, provincial, or national law. The defendant need not be the one who violated the foreign law; the wildlife itself becomes "tainted" even if someone else commits the foreign law violation. However, the defendant must know or, in the exercise of due care, should know, about its illegal nature.

This assimilation of foreign law under the Lacey Act is illustrated by a case involving the prosecution of Taiwanese nationals for attempting to import 500 metric tons of salmon that was taken in violation of a Taiwanese law that they themselves had not violated, but which they nonetheless knew had been violated when the fish were harvested.[4] In another example, over 144,000 pounds of blue king crab was seized and forfeited when it was imported after being harvested and transported in violation of Russian law.[5]

The Lacey's Act's assimilation of foreign laws is not an effort to police other countries. Rather, our assimilation of such laws potentially reduces demand in the U.S. for species poached in foreign countries. Assimilation of foreign laws also encourages international cooperation and mutual reciprocal enforcement efforts. The Senate Report issued in connection with the 1969 Amendments to the Lacey Act described what assimilation of foreign law accomplishes:

> On the international level...[b]y prohibiting the sale in the United States of wildlife protected by a foreign government, the demand [in the U.S.] for poached wildlife from that country will be sharply reduced. In addition, however, such a law is also designed to promote reciprocity. If we assist a foreign country in enforcing its conservation laws by closing our market to wildlife taken illegally in that country, they may in turn help to enforce conservation laws of the United States by prohibiting the sale within their borders of wildlife taken illegally within the United States.[6]

The Lacey Act occupies a central place within the framework of federal wildlife laws and is a key enforcement tool for several additional reasons. First, the Lacey Act applies to a wider array of wildlife than any other single protection law, including the Endangered Species Act. Second, it has the stiffest potential penalties. Third, its prohibitions have a greater reach, including offenses that start out in foreign countries as violations of the laws of another country.

THE LACEY ACT IS CURRENTLY OF NARROW APPLICABILITY TO PLANTS, INCLUDING TIMBER

Although the Lacey Act provides broad authority and strong enforcement tools to combat transnational wildlife trafficking, it does not currently apply to international traffickers of plants, including timber or associated wood products derived from illegal logging. The prohibitions of the Lacey Act that assimilate foreign law were not written to include foreign laws relating to plants, only fish and wildlife-related laws.[7] Plants were added to the Lacey Act enforcement scheme in 1981 to improve the effectiveness of existing State laws by providing a federal enforcement tool to crack down on those who blatantly violate State laws designed to conserve plants threatened with extinction. The 1981 amendments also apply to U.S. native plants that are listed under CITES. However, the provisions with respect to plants are more limited than those for wildlife. While the Lacey Act prohibits the taking, possession, transport, or sale of any fish or wildlife in violation of any State or foreign law, it omits the assimilation of foreign law for such acts with respect to plants. The Act prohibits only the taking, possession, transport, or sale of plants in violation of State law.

Just as the Lacey Act's plant enforcement reach was deliberately limited, the statute's definition of plant was likewise narrowly circumscribed. The Lacey Act defines "plant" and "plants" as "any wild member of the plant kingdom, including roots,

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[3] 16 U.S.C. § 3371(d).

[4] United States v. Lee, 937 F.2d 1388 (9th Cir. 1991).

[5] United States v.144,774 pounds of Blue King Crab, 410 F.3d 1131 (9th Cir. 2005).

[6] S. Rep. No. 91-526, 91st Cong., 1st Sess. 12 (1969), reprinted in 1969 U.S.C.C.A.N. 1425.

[7] 16 U.S.C. § 3372(a)(2)(B). However, no similar impediment prevents using the false labeling provisions of 16 U.S.C. § 3372(d) for violations involving plants.

seeds, and other parts thereof (but excluding common food crops and cultivars) which is indigenous to any State and which is either (A) listed on an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),[8] or (B) listed pursuant to any State law that provides for the conservation of species threatened with extinction."[9] (emphasis added). The Lacey Act only reaches plants native to the United States which are listed in one of the three appendices to CITES or protected by a State law that conserves species threatened with extinction. Listing of a plant under CITES does not bring a plant under the coverage of the Lacey Act if it is not native to the United States. Native plants listed under CITES can also be excluded from coverage if they are deemed to be food crops or cultivars under the definition of "plant."[0]

INTERDICTION EFFORTS AGAINST TRAFFICKING IN ILLEGALLY LOGGED TIMBER ARE FRUSTRATED BY THE ABSENCE OF BROAD-BASED CRIMINAL SANCTIONS

Absent protection afforded to various tropical timber species under CITES, it appears that no violation of U.S. law occurs upon the importation of stolen or illegally harvested logs. In other words, even if both the importer and federal enforcement officials know that the logs were taken illegally, so long as the documents submitted to the United States upon importation are complete, truthful and not false, no actionable criminal violation has occurred.

The Department has reviewed the federal criminal code to determine what laws might apply to such conduct. The Department reviewed a number of criminal provisions in Title 18 of the United States Code and concluded, based on this review, that none of those provisions could be applied to interdict and prosecute our hypothetical timber trafficker.[11] The only possible exception to this conclusion is under the unlikely circumstance that a foreign country treats unlawfully harvested timber as stolen goods or property and has the evidence to prove it, allowing prosecutors here to prosecute the subsequent transportation of the stolen timber in foreign commerce to the U.S.

One provision of Title 18 of the U.S. Code that is particularly useful in prosecuting wildlife traffickers, the smuggling statute at 18 U.S.C. § 545, has limited utility in prosecuting timber traffickers. There are two types of smuggling offenses set forth in the statute that are commonly used in cases involving wildlife. But those two types of smuggling offenses have limited applicability to plants because the offenses require a knowing importation "contrary to law." That term has in general been determined by the courts to mean contrary to United States law. Therefore, while a case involving wildlife trafficking can be prosecuted as a smuggling offense if the importation is contrary to either CITES or in rare instances the broad provisions of the Lacey Act itself applicable to wildlife, the narrow provisions of the Lacey Act applicable to plants and the relatively few timber species listed under CITES as described below limit its broader use against illegal logging and other illegal plant trade. In the Department's review of criminal statutes that we could possibly use to prosecute the importer of illegal timber, we also looked at offenses potentially chargeable under other titles of the U.S. Code, including conservation statutes, plant pest statutes, and cultural property provisions. We concluded that only if the importer acts in a manner violating CITES, which would enable us to include the violation as a component of a smuggling charge, would we have a legal mechanism by which to bring criminal charges.

CITES seeks to regulate the international wildlife and plant trade[12] by listing species in one of three "Appendices," based on the degree to which a species is at threat of extinction and in international trade. CITES regulates trade between countries, imposing the greatest restrictions on species found in Appendix I, and the least on those in Appendix III.

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[8] CITES is an international agreement which entered into force in July 1975 and to which the United States and 171 other countries are parties. The aim of CITES is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES currently accords varying degrees of protection to approximately 30,000 species of animals and plants.

[9] 16 U.S.C. § 3371(f)

[0] 0One court ruled that American ginseng, listed in Appendix II of CITES, was a common food crop or cultivar and not protected by the Lacey Act. United States v. McCullough, 891 F. Supp. 422 (N.D. Ohio 1995).

[11] The laws reviewed included those related to transportation of stolen goods in foreign commerce (18 U.S.C. 2314); false statement crimes (18 U.S.C. 542, 1001); smuggling of goods (18 U.S.C. 545); and money laundering (18 U.S.C. 1956 and 1957).

[12] By international wildlife and plant trade we refer to the import, export and re-export of live and dead animals, fish and plants, and their parts and derivatives).

CITES protections are implemented through a system of permits and certificates issued by both member and non-member countries that must accompany lawful shipments of listed plants or wildlife. The type of permit or certificate required, and the restrictions placed on the CITES shipment, depend on the particular appendix in which a species is listed: Appendix I, II, or III. CITES, Arts. III, IV, V. Appendix I is the most restrictive listing category and bans wildlife trade in listed species between countries for commercial purposes. Appendix II permits commercial trade under permit for species not yet considered in danger of extinction, as long as the trade is not detrimental to the survival of the species and the species were obtained in accordance with national law. Appendix III includes species identified by a Party as being subject to regulation within its jurisdiction and needing cooperation of other Parties in the control of the trade. CITES Art. V.

While CITES may provide a basis for pursuing a smuggling prosecution with respect to timber, it provides only a very limited basis for prosecuting cases involving the illegal-timber trade due to the fact that only a few of the many species subject to illegal logging and trafficking are listed under CITES.[13] Furthermore, the threshold that must be met for listing species under CITES is high and decisions to list species are frequently contentious.[14] Moreover, many timber species in international trade simply do not meet the criteria for listing under CITES. Consequently, even the listing of a species in a CITES appendix is no guarantee of effective international trade regulation by the member countries. In the United States, the Endangered Species Act is the statute by which we implement our CITES obligations.[15] To date there is not one reported successful criminal prosecution in the U.S. involving CITES-listed timber. The only reported civil case arising from U.S. efforts to apply the CITES restrictions to illegal logging is Castlewood Products, L.L.C. v. Norton, 365 F.3d 1076 (D.D.C. 2004), a case in which the court upheld the detention by U.S. officials of a number of bigleaf mahogany shipments from Brazil where U.S. officials doubted the validity of the accompanying Brazilian CITES export permits. Given that CITES currently regulates only a small number of timber species, it is not sufficient to cover the broader problem of illegal logging and timber trafficking.

THE DEPARTMENT OF JUSTICE SUPPORTS LEGISLATION TO STOP ILLEGAL LOGGING AND TIMBER TRAFFICKING

In 1981, when Congress overhauled the Lacey Act, it was prompted to do so by evidence that had been "uncovered of massive illegal [and highly profitable] trade in fish and wildlife...handled by well organized large volume operations run by professional criminals [who] utilize "white collar" crime tactics such as multiple invoicing and other fraudulent documentation to carry out and conceal their illicit activities."[16] Congress further warned that "the illegal wildlife trade has grim environmental consequences. It threatens the survival of many species...we value because of their commercial values...and the economic consequences of this trade are...severe."[17]

Almost identical language could be used today to describe the global problem of illegal logging and timber trafficking and the need for stronger enforcement tools to address it. Worldwide, illegal logging is estimated to be a multi-billion dollar industry activity. The adverse environmental consequences of illegal logging, including destruction of forest ecosystems and critical wildlife habitat, are enormous. Just as Congress recognized in 1981 that greater enforcement tools needed to be added to

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[13] Brazilian rosewood, brazilwood, bigleaf mahogany and ramin are some of the timber species listed under CITES. A number of other tree species are listed. Not all of the tree species listed are traded as timber; some are traded as medicinal or horticultural specimens. See plant listings under CITES appendices at www.cites.org.

[14] For example, an Appendix-II listing requires the CITES Parties to agree that the species, although not necessarily currently threatened with extinction, may become so unless international trade is subject to strict regulation in order to avoid utilization incompatible with the species' survival. CITES, Art. II.

[15] The Act designates the Secretary of the Interior and the United States Fish and Wildlife Service to carry out its functions and further the Secretary of Agriculture with respect to enforcement of the CITES provisions pertaining to the importation or exportation of terrestrial plants, and prescribes criminal penalties with up to one (1) year imprisonment and $100,000 fine for an individual, and $200,000 for an organization, for anyone convicted of "knowingly" importing or exporting CITES-listed specimens contrary to CITES, or possessing CITES-listed specimens traded in violation of the treaty. 16 U.S.C. §§ 1532(15); 1537a; 1538(c)(1), 1540(b)(1). See United States v. Winnie, 97 F.3d 975 (7th Cir. 1996) (possession of cheetah imported in violation of CITES illegal, even if imported outside of the statute of limitations). While the penalties for CITES offenses themselves are low, as noted earlier a CITES violation can support a felony smuggling charge.

[16] S. Rep. No. 97-123, 97st Cong., 1st Sess. 1 (1981), reprinted in 1981 U.S.C.C.A.N. 1748.

[17] Id.

the Lacey Act to combat illegal trade in wildlife, stronger enforcement tools should now be added to address trade in illegally-obtained timber.

In general, the Administration supports amending the Lacey Act to provide enforcement agencies with adequate and clearly defined legal tools to address illegal logging and trafficking of foreign timber. Addition of such enforcement tools to address trafficking in illegal timber is consistent with the President's Initiative and would enhance our ability to take steps against the multi-billion dollar trade in illegally logged timber. Such an amendment would support international good governance; it would provide a tool for effective enforcement in our domestic markets, thereby reducing demand for illegal timber; and it would encourage international cooperation and reciprocal enforcement efforts.

H.R. 1497, THE LEGAL TIMBER PROTECTION ACT

The Administration has, however, identified a number of concerns with the language in H.R. 1497 and issues that must be addressed. First, under the proposed legislation, the definition of "plant" is very broad; it could, for example, encompass items such as wooden shipping containers and packing materials such as paper and cardboard. We believe the scope should include timber and timber products, because there is a clear need for additional enforcement tools to address trade in illegal timber and timber products. However, we believe items like shipping containers and packing materials should not be included in the definition of "plant." We request that the Committee continue to work with the Administration on the scope of the term "plant" in the Bill.

In addition, by expanding the current conservation scope of the Lacey Act, H.R. 1497 places additional responsibilities on the Federal agencies that share responsibility for policing international plant trade in the United States. While meeting these responsibilities will require agency resources, we note that the President's FY 2008 budget, which was proposed some time ago, does not provide funds to responsible agencies to implement this legislation.

Furthermore, H.R. 1497 does not currently specify which government agency will lead implementation of the legislation's many operational tasks, such as development of regulations, inspection of shipments and collection of declaration information, reporting, and investigation of significant violations. We also want to ensure that deadlines for executive branch agencies to finalize regulations are realistic and based on time frames that will allow the agency to conduct the appropriate analyses, develop and propose suitable regulatory language, conduct the appropriate analyses required by law for such regulations, provide for adequate public notice and comment, and finalize the regulations. We thus recommend that the Committee consult with the affected agencies on appropriate deadlines.

H.R. 1497 also includes provisions that may raise certain complexities in implementation and enforcement. For example, prohibitions based on failure to pay "royalties, taxes, or stumpage fees" could raise complex enforcement issues. We also foresee questions surrounding declaration requirements, such as whether declarations will be required for all paper and paper products in international trade; which Federal agency will collect and analyze declaration information; and how that information will be processed.

Notwithstanding these various issues that must be addressed, we are pleased that we all share the goal of finding an effective but prudent means of fighting the illegal trafficking in foreign timber and timber products. We look forward to working with the Committee to ensure the clarity and effectiveness of any potential amendments to the Lacey Act.

CONCLUSION

Thank you for the opportunity to appear before the Subcommittee today to discuss this important topic. I would be happy to answer any questions that you may have about my testimony.

STATEMENT OF ANN WROBLESKI, VICE PRESIDENT, PUBLIC AFFAIRS, INTERNATIONAL PAPER COMPANY, ON BEHALF OF THE AMERICAN FOREST & PAPER ASSOCIATION

Ms. WROBLESKI. Thank you, Madam Chairman, Mr. Brown. Good morning. I am Ann Wrobleski, Vice President, Global Government Relations for International Paper. I served previously as Vice President International at the American Forest and Paper Association.

I appreciate the opportunity to present the views of the Association this morning.

Let me first tell you about AF&PA. It is the national association for the forest, pulp, paper, paper board and wood products industry. The industry accounts for about six percent of total U.S. manufacturing output, employs more than a million workers and ranks among the top 10 manufacturing employers in 42 states with an estimated payroll of over $50 billion.

Sales of forest and paper products top $230 billion. AF&PA and its 200 member companies and associations have long been keenly interested in illegal logging. After recent discussions with a wide range of stakeholders we believe there is a legislative path forward that will be affective in combating global illegal logging.

I want to discuss three aspects of the problem: economic, social, reputational. The economic costs of global illegal logging are hard to estimate, and in fact, the only widely accepted credible study was published by AF&PA in 2004. The study found that illegal logging likely depresses prices for legally harvested timber between seven and 16 percent.

The study estimated that the value of U.S. wood exports could increase by almost a half a billion dollars, $460 million, annually if there were no illegally harvested wood in the global marketplace. The social, environmental and political costs of illegal logging are less obvious but perhaps more destructive.

Illegal logging takes place generally in very poor countries or regions. Illegal logging goes hand in hand with corruption among government, military, law enforcement and erodes public confidence in what are likely to be already weak institutions. Illegal logging is a significant contributing factor to deforestation, to loss of biodiversity and to land degradation.

Finally, the forest products industry sees illegal logging as a reputational issue. Every time an acre of land is illegally harvested in Indonesia, in Russia, in Brazil, there is the possibility that the public will react negatively to our industry. For these reasons, AF&PA has cooperated with the U.S. Government and environmental stakeholders in several programs in an effort to combat illegal logging.

In 2003 we joined with the U.S. Department of State, Conservation International and others to launch the President's initiative against illegal logging. In 2004 we published the landmark report on the economic consequences of illegal logging. In 2005 AF&PA joined with Conservation International to create the Alliance to Combat Illegal Logging, a partnership to help halt timber operations in national parks in Indonesia.

In 2006 we applauded the announcement that the U.S. had signed an MOU with Indonesia to combat illegal logging. We are very supportive of the U.S. Government committing $1 million to finance on the ground efforts in Indonesia. This year the industry commends the administration for including illegal logging as a topic of discussion with the Chinese in the strategic economic SED dialogue talks.

Given all of these initiatives and activities we have watched the debate over expansion of the Lacey Act with keen interest. We applaud the Congress, particularly Mr. Blumenauer and Senator

Wyden, for their work in this field. We have endorsed S-1930, the Combat Illegal Logging Act of 2007, introduced in July by Senator Wyden, and we would endorse a bill in the House using Mr. Blumenauer's substitute language which utilizes the approach taken in the Wyden legislation.

The Wyden-Blumenauer approach is carefully crafted to address harvesting that is in clear violation of specific foreign and state laws designed to protect forests from criminal activity. While the bill does require companies to record specific information it does not require a costly chain of custody regime.

AF&PA and its member companies welcome action that raises the risks for the illegal trade without harming the legal trade. This is an important step toward leveling a playing field that is currently stacked against U.S. producers that are committed to trading in legal forest products. Ultimately, effective action must be taken where the activity takes place.

But expansion of the Lacey Act to include timber harvested illegally overseas sends a strong signal to governments, forest products producers, importers and exporters around the world that the U.S. Government, the forest products industry and the environmental community recognize the problem and are prepared to take corrective action.

Thank you, Madam Chairman. I look forward to your questions.

Ms. BORDALLO. Thank you, Ms. Wrobleski. Now, I would like to recognize Mr. Barringer.

[The prepared statement of Ms. Wrobleski follows:]

Statement of Ann Wrobleski, Vice President, Global Government Relations, International Paper Company, on Behalf of the American Forest & Paper Association

I appreciate this opportunity to present the views of the American Forest & Paper Association and its members regarding H.R. 1497—the Legal Timber Protection Act. AF&PA is the national trade association of the forest, pulp, paper, paperboard and wood products industry. The industry accounts for approximately 6 percent of the total U.S. manufacturing output, employs more than a million people, and ranks among the top 10 manufacturing employers in 42 states with an estimated payroll exceeding $50 billion. Sales of the paper and forest products industry top $230 billion annually in the U.S. and export markets. The more than 200 companies and related associations AF&PA represents have a strong interest in assuring that international trade in forest products is based on compliance with the laws of all countries. We have held extensive discussions with stakeholders on this issue and believe an effective approach can be developed to assist in the world-wide effort to control this environmental and economic threat.

What is illegal logging?

First, it is important to define what we are talking about. Illegal logging and illegal trade in forest products is a complex set of interrelated legal, political, social and economic issues. The term "illegal logging" clearly signifies legal abuses, but the types of activities considered to be "illegal" that are described in various published and web-posted reports are wide-ranging. It is important to note that there is no international definition of illegal logging. Yet, there are some kinds of abuses that, in the context of policy and trade discussions, rise to a level of both domestic and international significance. These activities involve organized efforts to outright steal trees or otherwise ignore a country's efforts to control and preserve its nation's forests, such as harvesting without authority in designated national parks or forest reserves, logging in excess of authorized amounts, failing to pay taxes or royalties on harvested logs, and exporting logs in violation of export limitations.

The concern surrounding illegal logging is a shared one and is a primary example of an area where the business and environmental communities are united on the need to develop credible and practical solutions to the problem. Illegal logging continues to grow as an important international issue that the forest products commu-

nity recognizes and is working to address. It undermines the economic viability of legally harvested and traded forest products and contributes to deforestation. Illegal harvesting can have deleterious impacts on biodiversity and other globally important environmental services. Among the factors driving illegal logging are: unclear or poorly enforced forest tenure, weak political institutions, poverty, corruption, inadequate natural resources planning and monitoring, and lax enforcement of sovereign laws and regulations.

Economic Considerations of Illegal Logging

Illegal logging, associated illegal border trade, and the use of illegally obtained timber in manufacturing distort international trade and reduce market opportunities for U.S. suppliers. The very presence of illegally procured wood fiber in the international marketplace affects the competitiveness of U.S. producers who operate legitimately in accordance with national and international environmental and trade rules.

In 2004, AF&PA commissioned what is widely considered to be the one of the most credible and informative reports on illegal logging and which has been separately submitted for the record. The study measured the economic impact on timber production and trade which results from illegally harvested wood products. The report concluded that many of the estimates on the extent of illegal logging are likely exaggerated, but the problem is nevertheless significant and depresses world prices by between 7 and 16%. The study also estimated that the value of U.S. wood exports could increase by over $460 million annually were there no illegally harvested wood in the global market. Eliminating suspicious roundwood in the global market would have an effect on domestic prices and on the pulp and paper sector which would be in addition to the impact on U.S. wood exports.

Based on the study's analysis, there is credible evidence to suggest that illegal logging of the kind that warrants international concern does, in fact, represent on the order of 8%-10% of global wood products production and a roughly similar share of global wood products trade. This includes only the impact on production and trade of logs, lumber, and wood panels, and does not include the impact on production and trade of secondary wood products, furniture, or pulp and paper. In aggregate, about 8% of the world's roundwood production is suspicious (likely illegal), somewhat less for lumber (6%), somewhat higher for plywood (17%).

Operators that flout the law are a relatively small segment of the total forest products business, but those that choose to engage in illegal forest activity do so largely because of the higher profit potential and/or shortages of legal material. Typically, higher returns are possible because illegal timber is presumably obtained at a lower cost than otherwise would be the case if legal.

Ultimately, the report concluded that to be effective, solutions to the illegal logging issue must reduce the spread between the costs of operating illegally and the costs of operating legitimately. Thus, to lessen the spread, the cost of illegal material needs to rise. This can be accomplished by enhancing enforcement making the risk higher and it more difficult (more costly) to operate in illegal timber.

Programs and Initiatives to Address Illegal Logging

AF&PA and its members are already recognized as leaders in fighting illegal logging and have worked proactively on the issue for several years. In 2003, AF&PA joined with the U.S. Department of State, Conservation International (CI), and others to announce the launch of the President's Initiative Against Illegal Logging. In 2004, AF&PA released its illegal logging report, as previously referenced, which for the first time analyzed the economic impacts of illegally produced and traded wood products. And, in 2005, AF&PA joined with CI to create the Alliance to Combat Illegal Logging, a partnership designed to help put a halt to timber operations in national parks and other protected areas.

Also in 2005, the Sustainable Forestry Initiative (SFI) standard, adherence to which is a condition of AF&PA membership, was revised to incorporate a new Performance Measure. The new measure states that SFI program participants shall have procurement programs in place that support the principles of sustainable forestry, including efforts to thwart illegal logging and promote conservation of biodiversity.

AF&PA and its members have also been and continue to be strongly supportive of ongoing efforts of the U.S. Administration to address illegal logging. In November 2006, AF&PA applauded the announcement that the U.S. Trade Representative's office and Indonesia's Ministries of Trade and Forestry had signed a memorandum of understanding (MOU) through which the United States and Indonesia pledged to combat illegal logging and the trade associated with it. The Administration subsequently backed up this pledge by committing $1 million in financing to support on-

the-ground efforts in Indonesia. Our industry also commends the Administration for its efforts to combat illegal logging through the Strategic Economic Dialogue (SED) talks, taking place between the U.S. and China. The recently completed second round of SED talks resulted in an agreement to establish a Joint Working Group to develop a Bilateral Agreement Addressing Illegal Logging and Associated Trade. We welcome and encourage continued discussions on this topic.

In the coming weeks, AF&PA is set to release a second report, "Wood for Paper: A Statistical Analysis of Sustainable and Suspicious Fiber Sourcing in the Global Pulp Industry". Preliminary analysis indicates that illegal logging, while an issue of concern in the pulp and paper industry, manifests itself much less in this sector than in solid wood products manufacturing. On a global basis, credible allegations about suspiciously (potentially illegal) procured wood fiber for the pulp industry represent less than 2% of the total fiber consumption by the pulp producing sector. In the case of the U.S., practically all roundwood used by the U.S. pulp industry is from managed natural forests or plantations of indigenous species.

At International Paper, we believe our wood procurement philosophy is among the most stringent in the industry. As a global leader in the production of paper and packaging products, integrity in the system (i.e. preventing illegal logging) is critical to our business and our ability to operate in a global market place. Our company, for example, has a long-standing policy of using no wood from endangered forests.

We comply with all applicable laws and regulations in our harvesting and procurement of primary wood (roundwood and chips) and market pulp. We do not procure or accept primary wood or market pulp for our mills from legally designated conservation areas or wood that has been harvested in violation of international trading rules or agreements, such as export bans or the Convention on Trade in International Species (CITES), or wood that is harvested without authorization or in excess of concession permit limits.

We assess risk, for non-North American fiber supply, of attaining illegally logged wood and address significant risk accordingly. We do not use wood fiber from tropical rainforests in our products, nor do we use any natural wood attained from areas designated by Conservation International to be "Tropical Wilderness Areas" or "Biodiversity Hotspots." Additionally, because we find it difficult to discern legal and sustainable forestry from the illegal and unsustainable, we have also placed a moratorium on any fiber use from Indonesia.

AF&PA and its members are doing the right thing and believe that any reduction in illegal logging will assist our legal products in competing against products manufactured from lower-cost illegal material. And we welcome action that raises the risks for illegal trade without harming the legal trade. This is an important step toward leveling a playing field that is currently stacked against U.S. forest producers that are committed to trading in legal forest products.

H.R. 1497—The Legal Timber Protection Act

We appreciate the increased interest shown by Congress to this important issue. AF&PA recognizes that legislation can potentially have a significant impact on the world-wide problem of illegal logging. In recent months, AF&PA has discussed legislation on this issue with other stakeholders, including the Environmental Investigation Agency (EIA), to seek a workable U.S. legislative approach to this problem that would minimize the impact on legal trade while creating an effective tool to regulate illegal trade coming into the United States.

These stakeholders have focused on the Lacey Act, a federal law designed to control illegal trade in wildlife, as the appropriate vehicle to address trade based on illegal logging. We support such an approach provided it specifies the types of foreign law violations that would trigger Lacey Act liability for forest products. Moreover, to be effective, it is critical that any legislation does not inadvertently increase the cost of legally-obtained timber and timber products, thereby making illegal logging more cost effective. Thus, any legislation should avoid costly chain-of-custody requirements that place undue burdens upon law-abiding businesses.

We particularly appreciate the leadership on this issue shown by Congressman Earl Blumenauer through his introduction earlier this year of H.R. 1497, the Legal Timber Protection Act. The introduction of this legislation, which would amend the existing Lacey Act to extend its scope to cover plants and plant products taken in violation of foreign and state law, has sent a signal that the United States Congress is serious about combating illegal logging. In fact, it was the introduction of this legislation that resulted in the completion of the stakeholders' discussions and a revised approach supported by AF&PA, its member companies, other forestry-related groups, labor unions, and the environmental community.

Rep. Blumenauer has drafted legislative language to substitute for his bill which utilizes the approach followed in S. 1930, the Combat Illegal Logging Act of 2007,

introduced in July by Senator Ron Wyden. We have endorsed Senator Wyden's bill and would endorse a bill in the House that uses Rep. Blumenauer's substitute language. The bill is carefully crafted to address harvesting that is in clear violation of specific foreign and state laws designed to protect forests from criminal activity. While the bill requires companies to record specific information about their plant-related imports, it does not require companies to prove a negative, that is, to prove to the U.S. government that their import is not illegal as a condition of clearing customs. AF&PA encourages the Committee to incorporate the bill language from S. 1930 as it moves forward on H.R. 1497.

AF&PA stands ready to continue to work with legislators and other interested stakeholders to craft appropriate solutions that do not hinder legitimate business transactions. We need to work together to stop this international problem that hurts the environment, the economy, and those companies that are doing right by our forests worldwide.

We believe that the importance of this issue to AF&PA extends well beyond the economic value of the trade opportunities lost to the U.S. forest products industry. To the extent that the general public associates logging, in any country, with "illegal activity," there is a danger of a negative impact on the image of our industry and the products that we produce.

Ultimately, we recognize that support for an amendment to the Lacey Act will have limited impact on combating illegal logging on the ground. But it will send a positive signal to governments, and forest product producers and exporters around the world that the U.S. government, its forest products industry and environmental community recognizes the problem and is prepared to take action.

On behalf of International Paper, Inc. and the American Forest & Paper Association, I appreciate the opportunity to offer our views on the issue of illegal logging and on H.R. 1497—the Legal Timber Protection Act.

Response to questions submitted for the record by the American Forest & Paper Association

Questions from Ms. Bordallo (D-GU)

1. It's not often that the forest products industry comes to Congress hand in hand with the environmental community to ask for more regulation. Why does the industry think this legislation is so important? Are you not concerned that your own companies might inadvertently be caught up in the Lacey Act?

AF&PA Response

We are committed to maintaining healthy forests in the U.S. and abroad and are deeply concerned that under-priced, illegally harvested wood is creating a negative economic and environmental impact for both the forest products industry and society as a whole.

The companies we represent, including domestic, exporting, and importing interests, have been consulted throughout this process. Upon considerable discussion they recommended that the Association support this legislation, which represents a balanced approach raising the risks for illegal trade without harming legal trade and without being overly burdensome on responsible industry actors. It is an important step toward leveling a playing field that is currently stacked against U.S. forest producers that are committed to trading in legal forest products.

2. Can you provide some more details about the negative impacts that imports of illegally harvested timber are having on the domestic forest products industry?

AF&PA Response

The economic costs of illegal logging are hard to estimate, and in fact the only widely accepted, credible study was published by AF&PA in 2004. A complete copy of this study was submitted for the hearing record.

The study found that illegal logging likely depresses prices for legally harvested timber by between 7 and 16%. It also estimated that the value of U.S. wood exports could increase by almost a half billion dollars annually if there were no illegally harvested wood in the global marketplace.

In certain important foreign markets illegal material significantly affects the ability of U.S. producers to export. For example, Russia exports hardwood logs to China, a substantial portion of which is likely of suspicious origin and which compete directly with U.S. hardwoods in the Chinese furniture industry. This trade represents

one of the most direct examples of competition between illegal wood supplies and U.S. exports of wood products.

Questions from Mr. Brown (R-SC)

1. Would your members support the addition of an "innocent owner" provision to H.R. 1497? Why or why not?

AF&PA Response

We believe innocent owners are already protected by the Lacey Act, as the government must prove intent or negligence to bring any charges against an individual. This bill would authorize the forfeiture of timber products when U.S. authorities can prove that these items were taken illegally. To do otherwise would allow goods proven illegal to continue in commerce—a practice that would undermine businesses selling legal product and create a perverse incentive to avoid doing due diligence.

2. How do your members track their logs back to the source of the harvest, especially with products like gatewood?

AF&PA Response

AF&PA members are committed to implementation of and compliance with the principles and objectives of the Sustainable Forestry Initiative—Standard (SFIS). Objective 8 of the Standard is focused on broadening the practice of sustainable forestry through procurement programs. For example, Performance Measure 8.3 requires program participants to clearly define and implement policies to ensure that mill inventories and procurement activities do not compromise adherence to the principles of sustainable forestry. In practice this means that participants shall have programs in place that ensure the purchase of raw material from qualified logging professionals, wood producers, and other wood suppliers. In addition, such programs must ensure that harvests of purchased stumpage comply with best management practices.

Best management practices are defined as: A practice or combination of practices that is determined by a federal, provincial, state, or local government or other responsible entity, after problem assessment, examination of alternative practices, and appropriate public participation, to be the most effective and practicable (including technological, economic, and institutional considerations) means of conducting a forest management operation while addressing any environmental considerations.

3. How do your members prove that the products they buy and sell were not harvested, transported, or sold in violation of any law?

AF&PA Response

AF&PA members are committed to implementation of and compliance with the Sustainable Forestry Initiative—Standard (SFIS). Objective 11 requires all SFI participants to comply with applicable federal, provincial. state, or local laws and regulations. In addition, SFI program participants are committed through their international land management and procurement activities to promote the conservation of natural forests in areas identified as biodiversity hotspots and major tropical wilderness areas. Additionally, Performance Measure 8.5 in the SFIS states that "program participants shall ensure that their procurement programs support the principles of sustainable forestry, including efforts to thwart illegal logging and promote conservation of biodiversity."

4. A recent report by the Seneca Creek Associates for AF&PA found that: "Most illegally produced timber is used domestically and does not enter international trade." Is this statement correct? What percentage of illegally produced timber is consumed within each country?

AF&PA Response

The Seneca Creek report did estimate that most illegally produced timber is used domestically and does not enter international trade. In most cases, the majority of illegal wood is consumed in the domestic market, where fewer questions may be asked on wood origin than in the export markets. In addition, in developing countries where the majority of illegal harvesting is taking place, exporting tends to be done by larger companies, and those with relatively larger, better quality processing facilities. Since these companies are larger and well-known, it is logical to assume that government supervision would be heavier on these groups, rather than the smaller mills, and that relatively less of the wood produced and exported by these more well-known companies would be illegal.

The suspicious volume of roundwood (logs) that enter international trade represents on the order of just 1% of global production for both softwood and hardwood.

However, on a global export basis, the study estimates that 12% of global softwood log exports and as much as 17% of global hardwood log exports are of suspicious origin. As much as 23% of hardwood lumber exports and 30% of hardwood plywood exports might be considered suspicious. This is largely attributable to the Indonesian situation where a high percentage of production, and hence export, is believed to be illegal.

The percentage of illegally produced timber consumed within different countries/regions varies. The Seneca Creek report, submitted to this hearing's record, contains more detailed information on a targeted list of areas, including Brazil, Indonesia, Malaysia, West Africa, China, and Russia.

STATEMENT OF VICTOR C. BARRINGER II, PRESIDENT AND CEO, COASTAL LUMBER COMPANY, ON BEHALF OF THE HARDWOOD FEDERATION

Mr. BARRINGER. Madam Chairman and members of the Subcommittee, thank you very much for holding this hearing. My name is Victor Barringer. I am President and CEO of Coastal Lumber Company. As a company and as an industry we recognize the critical issues related to illegal logging worldwide and appreciate this committee's willingness to address these issues today.

Coastal Lumber Company operates in nine states employing 1,300 employees at 24 hardwood lumber manufacturing plants nationwide. We are proud to be one of the largest employers in Chairman Rahall's State of West Virginia. Since January 1, 2000, there have been 314 furniture plant closures with massive layoffs affecting some 69,190 workers.

Manufactured household names such as Thomasville, Henredon, Broyhill, Century Collect now only have one to two manufacturing plants left in the U.S. The hardwood lumber industry which supplies wood to the furniture industry has lost 38 percent of its existing mills since 2000. One of the main reasons the furniture industry went to China is cheap wood to supply these plants.

Despite this we can compete with legally logged timber from around the world no matter where the plant is located. We cannot compete with bribes being paid to forestry officials and others along the Russian-Chinese border. These people have no regard to what this illegal trade is doing to the environment or to manufacturing jobs in the U.S.

The furniture industry aside, there are a lot of jobs at stake here. For example, there are 29,000 forest products industry related paychecks being generated annually in the State of West Virginia. Pennsylvania has about 95,000. In short, this is an environmental and economic catastrophe unfolding before this committee.

I have traveled throughout Southeast Asia in recent decades and I have personally witnessed large blocks of deforested timber land. I have been to the log yards around the northern Chinese border trading in illegal timber, and I have witnessed this illegal trade from Russia. I am here today to inform the Congress that this situation is far worse than any report you may have seen.

Essentially, there exists no enforcement of local harvesting laws due to the ranging system of bribes and criminal conduct. Joining us in this concern is the Hardwood Federation, the largest hardwood forest products industry association in the United States, representing 14,000 businesses, 30 trade associations and over one million hardwood families in the U.S. and Canada.

However, the pressing concerns over illegal logging and the need to seek legislative solutions was given a unanimous vote of endorsement by the Hardwood Federation board of directors earlier this year and it is viewed as the top priority for the association. Coastal Lumber Company is obviously not alone having seen first-hand the devastation caused by the corruption in this logging trade.

We do not plan to sit by and watch illegal practices create an unfair playing field. Our intention to sustainable forest practices is a costly element in our business, and as CEO I can attest to the fact that abiding by these laws which govern private business is costly, but we do it. In the case of forestry laws we know that in doing so we are investing in the future of our business.

Earlier this year the Hardwood Federation issued the first public statement of support for efforts to end illegal logging including the possibility of amending the Lacey Act. Since that time, legislation has been developed which we believe will curb illegal wood imports and will help protect law abiding forest products industries and employees as well as the forest ecosystems around the world.

We applaud Representative Blumenauer's leadership in introducing H.R. 1497 and the amendments the Congressman has agreed to implement. We urge this committee to continue to focus on this issue and pending legislative proposals to reflect diversion interest, and we have come together to a call for action. Thank you for allowing me to testify before this committee.

Ms. BORDALLO. Thank you very much, Mr. Barringer. I now recognize Mr. von Bismarck.

[The prepared statement of Mr. Barringer follows:]

Statement of Victor Clay Barringer, II, Coastal Lumber Company, Charlottesville, Virginia

Madam Chairman and members of the Subcommittee, thank you very much for holding this hearing. My name is Victor Barringer and I am President & CEO of Coastal Lumber Company. As a company and as an industry we recognize the critical issues related to illegal logging worldwide and appreciate the Committee's willingness to address those issues today.

Coastal Lumber operates in nine states, employing 1300 employees at 24-hardwood lumber manufacturing plants nationwide. We are proud to be one of the largest employers in Chairman Rahall's state of West Virginia, and collectively with our sister companies, we are the 3rd largest taxpayer in the state of West Virginia.

In addition, we have extensive business relations in Asia. I have traveled throughout Southeast Asia in recent decades, and have personally witnessed the sites of large blocks of deforested timberland, and have been to the log yards along the Northern Chinese border-trading illegal logs from Russia. I am here today to inform the U.S. Congress that the situation is far worse than any report you may have seen to date. Essentially there exists no enforcement of local harvesting laws due to the reigning systems of bribes and criminal conduct.

Joining us in this concern is the Hardwood Federation, the largest hardwood forest products industry association in the United States, representing over 14,000 businesses, 30 trade associations and over one million hardwood families in the United States and Canada. The Federation represents the majority of organizations engaged in the manufacturing, wholesaling, or distribution of North American hardwood lumber, veneer, plywood, flooring, pallets, kitchen cabinets and related products. As you can imagine, the Federation is challenged to maintain consensus on a myriad of issues given the breadth and diversity of the association membership. However the pressing concerns over illegal logging and the need to seek legislative solutions was given a unanimous vote of endorsement by the HF Board of Directors earlier this year and is viewed as a top priority issue for the association. Coastal Lumber obviously is not alone in having seen first-hand the devastation caused by

corruption in the logging trade. While we are the largest users of the resource we are also among the most fervent guardians of these forests as well.

Companies in the hardwood industry are predominantly small, family-owned businesses, dependent upon a sustainable supply of healthy timber resources. Many are operated by third, fourth or even fifth generation family owners. Given this history and legacy, our industry maintains a long-term view of the valuable forest resources, which are the mainstay of our business. In fact hardwoods are by definition a long-term raw material given the decades-long growing cycle required for high valued wood species. Imagine depending upon a raw material, which takes almost an adult lifetime to grow to maturity! Hardwood timber is renewable and sustainable, but not readily replaceable once damage is done.

We do not plan to watch as illegal practices create an unfair playing field. When we cannot compete fairly opportunities for providing jobs to our families in generations to come and in our local communities are lost as well as the wood products prized by consumers throughout the world as a universal sign of quality in homes, buildings, furniture and décor Our attention to sustainable forest practices is a costly element in our business, and as a CEO I can attest to the fact that abiding by the laws which govern private business is costly. But we do it, and, in the case of forestry laws we know that in doing so we are investing in the future of our business.

Since January 1, 2000, there have been 314 furniture plant closures with massive layoffs affecting some 69,190 workers. Manufacturers with household names such as Thomasville, Henredon, Broyhill and Century collectively now have only two or three manufacturing plants left in the U.S. The hardwood lumber industry, which supplies wood to the furniture industry, has lost 38% of its existing mills since 2000. One of the main reasons the furniture industry went to China is cheap wood to supply these plants. Despite this, we can compete with legally logged timber from around the world no matter where the plant is located. We cannot compete with bribes being paid to forestry officials and others along the Russian/Chinese boarder. These people have no regard for what this illegal trade is doing to the environment or to manufacturing jobs in the U.S. The furniture industry, aside, there are a lot of jobs at stake here. For example, there are about 29 thousand forest products industry paychecks being generated annually in the state of West Virginia. Pennsylvania has about 95 thousand industry related paychecks in the state and I would say that most states have similar numbers. In short this is an environmental and economic catastrophe unfolding before this committee.

Earlier this year, the Hardwood Federation issued the first public statement of support for efforts to end illegal logging, including the possibility of amending the Lacey Act. Since that time legislation has been developed which we believe will curb illegal wood imports and help protect law-abiding forest products industries and employees as well as forest ecosystems throughout the world. We applaud Rep. Blumenauer's leadership in introducing H.R. 1497 and the amendments the Congressman has agreed to implement. We urge the Committee to continue to focus on this issue and pending legislative proposals to reflect the divergent interests, which have come together to call for action. On behalf of Coastal Lumber and the Hardwood Federation we pledge to continue in our own active role and work to move towards a strong, effective U.S. statute to curb this alarming threat to our industry and to hardwood forests throughout the world.

Thank you for allowing me this opportunity to appear before you today.

Table 1: US Wood Product Import Streams Greater than US$300 million in 2006

import streams		*sums by 4-digit HTS code*		*top exporting countries (value in millions)*
Description	*HTS*	*2005*	*2006*	
wooden furniture	*9403**	*10,316,787,155*	*10,765,402,742*	China (4900+); Canada; Vietnam; Malaysia; Indonesia; Italy
sawnwood (coniferous)	*4407*	*8,267,423,547*	*7,612,178,244*	Canada (6000+); Germany; Chile; Sweden; New Zealand; Brazil
wooden-framed seats	*9401**	*3,604,252,911*	*3,914,786,191*	China (2100+); Mexico; Italy; Canada; Malaysia; Indonesia
joinery (doors 27%, "other" 52%)	*4418*	*2,691,319,323*	*2,840,524,158*	Canada (1700+), China, Brazil, Chile, Mexico, Indonesia
plywood	*4412*	*2,302,721,593*	*2,570,673,894*	China (982), Canada, Brazil, Malaysia, Indonesia, Russia
particleboard & OSB	*4410*	*2,963,521,244*	*2,168,468,378*	Canada (2048); Mexico, Germany, Brazil, Ireland, China
continuously shaped (flooring, siding, molding, dowel rods, etc.)	*4409*	*1,588,314,630*	*1,740,815,462*	Brazil (460), China, Chile, Canada, Mexico, Malaysia
fibreboard	*4411*	*1,385,802,928*	*1,350,612,917*	Canada (411), Chile, Spain, Germany, Belgium, China
"other" wood products	*4421*	*1,292,190,467*	*1,284,639,813*	Canada (445), China, Brazil, Mexico, Taiwan, Italy
sawnwood (hardwood; ~40% tropical)	*4407*	*720,888,923*	*710,161,504*	Canada (257), Brazil, Peru, Malaysia, Ecuador, Germany
marquetry, caskets, statuettes, non Ch. 94 furniture, etc	*4420*	*519,612,084*	*550,517,995*	China(394), Thailand, Mexico, Indonesia, India, Vietnam
veneer	*4408*	*575,049,433*	*542,873,919*	Canada (372), Brazil, Germany, Italy, China, Ghana
wooden frames (pictures)	4414	*405,414,738*	*445,282,267*	China (252), Thailand, Indonesia, Mexico, Canada, India
roundwood (all)	*4403*	*347,944,982*	*356,283,816*	Canada (318), Germany, Chile, Brazil, China, France

*note: only 6-digit HTS classes that denote wood products are included (e.g. 940161 and 940169; 940330-940360).

Table 2: Characteristics of an Effective Legal Mechanism to Combat Illegal Logging and Associated Trade	
Characteristics of an Effective Law	***Does a Lacey Act amendment have these qualities?***
Acknowledge and support existing laws in producer countries	Yes. Basic structure of law is to recognize foreign law violations as the trigger for Lacey Act violations.
Be capable of addressing the manifold types of illegality in the timber sector	Yes (with caveat). Lacey Act cases are triggered by breaking any underlying law, if this can be proven. Caveat: the bills currently before U.S. Congress present language whose scope is focused on laws related to illegal harvest and trade. For example, labor laws are not covered.
Support and strengthen existing domestic enforcement efforts in producer countries	Yes. Prosecution under Lacey requires cooperation with producer country law enforcement agencies; proceeds from forfeiture are sometimes shared with foreign governments to defray costs.
Raise the risk for abetting illegal activity	Yes. Lacey creates financial and criminal penalties for violating underlying laws; penalties vary based on extent of company's prior knowledge.
Create incentives for companies and buyers to perform due diligence and improve tracking and monitoring systems	Yes. Companies shown to be exercising "due care" – internal policies and tracking systems, independent certification, participation in stepwise programs, etc. – protect themselves from risk of most possible charges.
Decrease foreign traffickers' market access and profit margins	Yes. Increased incentives to ask questions make U.S. companies more likely to seek out trusted legal sources.
Increase transparency and information available to law enforcement officials	Yes. Currently proposed Lacey amendments introduce a declaration requirement that includes species, country of harvest, and other information that enables more targeted law enforcement and data collection.
Give businesses guidance on what constitutes 'legal'	Yes. Currently proposed Lacey amendments articulate the range of laws that will be considered underlying violations. Major illegalities such as cutting in protected areas or exporting despite log bans are all covered, while laws unrelated to illegal logging or plant protection are excluded.
Avoid penalizing or unduly burdening businesses that are trying to do the right thing	Yes. The "knowledge and intent" requirements and "due care" provisions, as well as existing case law precedent and U.S. law enforcement agencies' limited resources, all mean that Lacey targets the worst offenders.
Be flexible over time, given the complexities of the global timber trade	Yes. Lacey does not tell businesses how to avoid violating the law – it leaves the "how" up to them. Currently proposed declaration requirements are limited to basic information, and are designed to be re-evaluated after an initial period of two years.
Be feasible to implement, for both business and the government.	Yes. The fisheries and wildlife trade industries have worked with Lacey for a century, and developed appropriate contracts and due diligence measures such as payment-upon-customs-clearance. The government, with intelligence-led enforcement work, could make effective use of a limited number of inspectors in key ports to cover a large percentage of wood products trade. This law functions as much by market signal as by daily enforcement, by increasing the risks for wrong-doing and sending a ripple of questions down the international supply chain.

[1] Environmental Investigation Agency. 2005. The Last Frontier.
[2] USFWS reported total imports of mahogany in 2004 valued at $59 million. EIA reviewed CITES ramin imports permits in 2002 and determined the total import value to be $11 million. Both figures are likely to be lower for current years. Given total U.S. wood products imports of $23.1 billion – excluding furniture – in 2006, total imports of CITES-listed species is roughly 0.3%.
[3] Environmental Investigation Agency. 2005. The Illegal Logging Crisis in Honduras.
[4] Stern Review on the Economics of Climate Change. 2007.
[5] Barber, C., June 2006. Combating Illegal Logging and Associated Trade in Indonesia: A Compilation of Activities Supported by the United States Government, Industry and Non-Government Organizations, USAID.
[6] Nellemann, C., et al. (Eds). 2007. The last stand of the orangutan – State of emergency: Illegal logging, fire and palm oil in Indonesia's national parks. United Nations Environment Programme, GRID-Arendal, Norway.
[7] Environmental Investigation Agency/Telapak. 2007. The Thousand Headed Snake: Forest Crimes, Corruption and Injustice in Indonesia.
[8] Apriadi Gunawan. 4 May 2007 Sumatra courts irk police with 'iffy' verdicts *The Jakarta Post.*
[9] Straits Times. 10 March 2002. Timber trader's thugs did this to him. http://ecologyasia.com/news-archives/2002/mar-02/straitstimes.asia1.com.sg_asia_story_0,1870,107415,00.html
[10] Environmental Investigation Agency/Telapak investigations.
[11] Port, Import, Export Reporting Service (PIERS) data.
[12] Reuters. 6 Feburary 2007. Illegal Logging hits Asian forests, orangutans: U.N.
[13] ITS data search.
[14] EIA. 2005. The Illegal Logging Crisis in Honduras.
[15] Amnesty International alert. Honduras: Environmentalists killed in Olancho department. AI Index: AMR 37/001/2007
[16] Movimiento Ambientalista de Olancho. 22 Diciembre 2006. Comunicado No. 28.
[17] Calculation based on market prices and annual mahogany quota compared to total trade statistics available from ADEX.
[18] Fagan, C. and D. Shoobridge. 2007; Fagan, C. and D. Shoobridge. 2005. An Investigation of Illegal Mahogany Logging in Peru's Alto Purús National Park and its Surroundings. http://www.parkswatch.org/spec_reports/logging_apnp_eng.pdf
[19] See e.g. de la Cal, J.C. 19 August 2007. La Caoba Sale Cara. *El Mundo*
[20] Bedoya Garland, E. and A. Bedoya Silva-Santisteban. 2005. Trabajo forzoso en la extracción de la madera en la Amazonía peruana.Lima: OIT/Oficina Subregional para los Países Andinos..Documento de Trabajo 193.
[21] See e.g. de la Cal, J.C. 19 August 2007. La Caoba Sale Cara. *El Mundo*
[22] White, A. et al. 2006. China and the Global Market for Forest Products: Transforming Trade to Benefit Forests and Livelihoods. Forest Trends.
[23] Environmental Investigation Agency analysis of ITC data.
[24] Goodman, P.S. and P. Finn. 1 April 2007. Corruption Stains Timber Trade. *The Washington Post*, page A01.
[25] ITTO. 1-15 August 2007. Tropical Timber Market Update.
[26] Hewitt, J. 2006. Which 10 bilateral trade flows have most salience to international effort against "Illegal timber"? Available at www.globaltimber.org.
[27] EIA. 2005. The Last Frontier.
[28] Ibid.; Stark, T., and S.P. Cheung. 2007. Sharing the Blame: Global Consumption and China's Role in Ancient Forest Destruction. Greenpeace International and Greenpeace China.
[29] Global Witness. 2003. A Conflict of Interests: The Uncertain Future of Burma's Forests.
[30] Global Witness. 2007. Cambodia's Family Trees: Illegal logging and the stripping of public assets by Cambodia's elite.
[31] Uganda Sunday Vision, 16 June 2007. China's Rise: Hope or Doom for Africa? http://www.illegal-logging.info/item_single.php?item=news&item_id=2168&approach_id=1
[32] Milledge, S.,et al.. 2007. Forestry, Governance and National Development: Lessons Learned from a Logging Boom in Southern Tanzania. TRAFFIC.
[33] A. White et al. 2006,
[34] Environmental Investigation Agency/Telapak investigations, 2007; P. Goodman and P. Finn. 2007.
[35] quoted on BBC. 22 May 2007. Siberian resource watchdog head sacked over illegal logging. Source: "Novosti" news report by Russian Channel One TV.

[36] FAO data shows global exports of "forest products" were valued at $185,724,802 in 2005, of which the U.S. imported $31,997,857. This figure includes roundwood, sawnwood, wood-based panels (plywood, veneer, particleboard, fibreboard, MDF), wood pulp, paper and paperboard. The FAO figures for U.S. imports by value are lower than U.S.'s own ITC data.
[37] Contreras-Hermosilla et al. 2007. The Economics of Illegal Logging and Associated Trade. OECD Round Table on Sustainable Development
[38] ITC search for following HTS codes: Ch. 44, parts of Ch. 94, 94, 96. List available upon request.
[39] Given the nature of wood processing it is extremely difficult to identify if a given piece of wood is, itself, derived from illegal sources. The terms 'suspicious' and 'high-risk' origin are commonly used to denote material that has a high likelihood of having been cut, transported and/or traded illegally.

[40] These figures include furniture, pulp and paper, and secondary manufactured products . Analysis available in Contreras-Hermosilla et al. 2007, and at http://www.globaltimber.org.uk/G8IllegalTimber.htm
[41] Seneca Creek Associates. 2004. Illegal Logging and Global Wood Markets: The Competitive Impacts on the U.S. Wood Products Industry; Royal Institute of International Affairs. 2003. "Scale of illegal logging." http://illegal-logging.info/Scale.htm.; World Bank. 2006. Strengthening Forest Law Enforcement and Governance: Addressing a Systemic Constraint to Sustainable Development. Report No. 36638-GLB. Available at http://go.worldbank.org/FMKUFABJ80.
[42] Brack, Duncan. 2006. Excluding illegal timber from EU markets: Options for the EU and its Member States. http://www.illegal-logging.info/item_single.php?item=document&item_id=365&approach_id=26
[43] Tropical Forest Trust. 2007.

Response to questions submitted for the record by the Hardwood Federation

Questions from Ms. Bordallo (D-GU)

Do you believe the forestry industry in the United States will respond favorably to a curtailment in illegal logging worldwide? If so, how?

Yes. Were there no illegally harvested wood in global market value of U.S. wood exports could increase by over $460 million each year based on recent report commissioned by AF&PA.

Can you provide some additional details on the negative impacts that illegal logging overseas has had on the domestic forest products industry?

Raw materials, such as logs, typically account for 60-80 percent of the cost of production for hardwood products. It is estimated that 8-10% of all wood production globally is due to illegal harvesting practices. Illegal trade in these materials allows foreign suppliers an additional means to enter the U.S. market in substantial numbers and at extremely low prices.

Questions from Mr. Brown (R-SC)

1. **In your testimony, you say you have witnessed the sites of large blocks of deforested timberland. I recognize how ugly clear-cuts can be as I've traveled throughout the Western part of the U.S. and have seen this practice first-hand as well. Do you know if this was clear-cut legally or illegally? And, was it for land conversion to an agricultural use or do you know?**

Only what the farmer told me. The local farmer told me that people came in, cut this timber and left, and they did not own it. It was not for conversion to agricultural use.

2. **You also mention corruption in the international logging trade. What are your first-hand experiences? Which laws were broken?**

I visited a log yard in Northern China—I don't recall the name of the town. The people who operated the log yard were very matter-of-fact regarding the timber that was taken from the Russian Government and railed into China.

3. **Do you support adding an "innocent owner" protection for businesses like yours? Why or why not?**

Innocent owners are already protected by the Lacey Act, as the government must prove intent or negligence to bring any charges against an individual. It is the government that must prove the illegal material's chain of custody, not the owner.

4. **Do you have documentation that links the loss of jobs to the importation of illegal raw material?**

No, there is not formal documentation. However, for example, hardwood plywood consumption and wood flooring sales increased by approximately 20 percent between 2002—2006, but the increase for these products was supplied by imports. U.S. production of these products actually declined which in turn impacts the workforce in these areas.

5. **We continue to see more automation in U.S. plants. How does this affect loss of jobs?**

Productivity has increased in forestry as well as in wood products manufacturing as in almost ever sector in the economy. The use of new technologies and better forest management systems has allowed growth and yields to increase significantly which should assist U.S. competitiveness. All of which helps to ensure sustainable forestry as well as the potential for increased production. Certainly resolving issues around illegal countries will level the playing field for our producers and allow our industry to take advantage of technology improvements which while automating many operations often lead to more and better jobs in our sector.

6. **Would you support certification of chain of custody to ensure that no domestic supply of wood is tainted by illegally obtained wood?**

No. There is already an array of tools, technologies and resources (adopted by numerous industry leaders) that make it possible to work with one's suppliers on due care steps to eliminate illegal wood. Businesses can practice due care, without a chain of custody, by asking the right questions of your suppliers and using resources available from the government and private sources to become aware of marketplace concerns in country of origin.

STATEMENT OF ALEXANDER VON BISMARCK, EXECUTIVE DIRECTOR, ENVIRONMENTAL INVESTIGATION AGENCY

Mr. VON BISMARCK. Thank you, Madam Chairwoman Bordallo for the opportunity to testify before this Subcommittee. We speak today of a problem that as the composition of this panel demonstrates unites a diversity of stakeholders in a common concern.

I am the Executive Director of the Environmental Investigation Agency, and EIA is honored to present this testimony as part of a broad coalition of environmental, labor and industry organizations who all agree that illegal logging and associated trade is bad business for the environment, for poor people worldwide and for companies and that the time has come for the United States government to take action to curb our role in driving this problem.

The Environmental Investigation Agency is a nonprofit organization which has worked 23 years to investigate and expose environmental crimes and advocate for lasting solutions. EIA's analysis of trade in illegal timber and wildlife have been globally recognized, and this year we were honored to receive the U.S. Environmental Protection Agency's award for our investigations into the chemical trade.

Since 1999 EIA has used undercover techniques in partnership with local organizations to document the impacts of illegal logging and the criminal networks that are behind it. Our experience has shown us unequivocally that illegal logging, which causes the most serious environmental and social harm, is driven by international trade and that any solution will therefore require action from consuming nations such as the United States.

These findings are collected in our report, No Questions Asked, which we have prepared for this hearing. In this oral testimony I want to touch on examples of the environmental and human cost of illegal logging, point out how we are fighting the problem currently with one hand tied behind our backs and how the amendment of the Lacey Act to prohibit the import and sale of illegally sourced wood and wood products and the declaration of some basic information is critically needed.

Illegal logging has a devastating impact on our global environment as pointed out earlier by Representative Blumenauer, but perhaps some of the most destructive impact of illegal logging is on human lives and society. Revenue from illegal logging and export trade supports and perpetuates corruption and criminal activities and fuels violent conflicts much like the blood diamonds that funded wars in west Africa.

Honduras is one of many countries where illegal logging is a crisis for the country's environment and society. For more than a decade the grassroots environmental movement of Olancho has opposed logging on their community lands by companies owned by Lamas, Noriega and other barons. Between 1996 and 2007, eight members are alleged to have been killed for their activism.

Last December, Heraldo Zuniga, Roger Ivan Murillo Cartagena became the latest victims put up against the town hall wall and shot. At least six members of the organization have fled the country over the past year fearing for their lives. The government itself estimated that in 2006 one million board feet of mahogany were extracted illegally as this slide points to.

EIA has found that one of the recipients of suspect mahogany was a subcontractor slated to build bullet proof doors for the Capitol Building. In Indonesia, also, the crimes are not only against the forest but against people. Among the world's most infamous timber barons EIA has investigated is Abdul Rasyid whose company ordered an attack on investigative journalist Abi Kusno Nachran, shown here, after his information led to government seizure of three illegal timber shipments.

Abi Kusno was hijacked on the road by a gang of hired thugs who hacked him with machetes in the back, arms and head and left him for dead. All cases against Rasyid, the timber baron, have been dropped, and his empire is building.

Despite the law that makes sawn timber exported from Indonesia expressly illegal, U.S. trade data shows that over 1,500 shipments declared on Customs forms as Indonesian sawn timber worth some $30 million entered U.S. ports between November 2004 and November 2006. That is more than two shipments a day.

Indonesia's environment minister has publicly pleaded with consumer nations to stop buying Indonesia's illegal timber. The trail of this timber, Madam Chair, goes through organized crime. This is a short excerpt of an undercover meeting with Frankie Chua, a member of a major Southeast Asian timber cartel.

[Videotape]

Mr. VON BISMARCK. Madam Chair, if the volume could not be heard, he was introduced as timber mafia. He said that timber smuggling is good, drug smuggling is bad, and he closed with, no buyer, no smuggling. Currently, Madam Chair, we are the buyers of this timber. We are the unwitting financiers of this crime. This is why, Madam Chair, the opportunity of this legislation is so great.

This legislation will send a powerful signal through the international markets that the biggest market for wood products, the United States, does not want to support the violence and destruction caused by this logging. Thank you.

Ms. BORDALLO. Thank you very much, Mr. von Bismarck, for that very compelling testimony. Finally, the Chair recognizes Mr. Forester.

[The prepared statement of Mr. von Bismarck follows:]

Statement of Alexander von Bismarck,
Environmental Investigation Agency, Inc.

Introduction

Thank you, Madame Chairperson and Honorable Members of the Subcommittee, for the opportunity to testify before the Subcommittee regarding H.R. 1497, the Legal Timber Protection Act, legislation to amend the Lacey Act Amendments of 1981 to address global illegal logging and associated trade in illegal timber and wood products. We speak today of a problem that, as the composition of this panel demonstrates, unites a diversity of stakeholders in common concern. I am the Executive Director for the Environmental Investigation Agency. EIA is honored to present this testimony as part of a broad coalition of environmental, labor, and industry organizations who all agree that illegal logging and associated trade is bad business—for the environment, for poor people worldwide, and for American companies—and that the time has come for the United States government to take action to curb our role in driving this problem.

The Environmental Investigation Agency (EIA) is a non-profit 501(c)(3) organization which has worked for 23 years to investigate and expose environmental crimes,

and advocate for creative and effective solutions. EIA's analyses of the trade in illegal timber, wildlife, and ozone-depleting substances have been globally recognized.

Since 1999, EIA has used undercover methodologies in partnership with local organizations to document the environmental and social impacts of illegal logging, and its context of corruption and criminal activity, in countries including Indonesia, Malaysia, China and Honduras. Our experience has shown us unequivocally that the illegal logging which causes the most serious environmental and social harm is inextricably linked into international trade, and that any solution will therefore require action from both producer and consumer nations.

In this testimony we discuss:

(1) The high environmental and human costs of illegal logging and associated trade worldwide, and the role played by U.S. market demand in supporting these illegal and criminal activities;
(2) The lack of adequate tools to address this problem from a demand-side perspective;
(3) The reasons why EIA and our broad coalition believe that amending the Lacey Act to prohibit the import and sale of illegally-sourced wood and wood products, and to require the declaration of certain basic information, is an effective and elegant way to address the problem.

For a more complete discussion of these points, please see our full report, "No Questions Asked: The Global Impacts of U.S. Market Demand for Illegal Timber—and the Potential for Change," available at www.eia-global.org.

No Questions Asked

Illegal logging and associated trade are criminal activities that occur in the context of weak and corrupt governance in timber-rich countries and shipping and manufacturing hubs. These activities are financed and fueled by ever-growing demand from international markets that don't discriminate legal from illegal wood products. The profits that lie in exporting valuable hardwoods or softwoods is staggering: according to current field data, merbau stolen from Indonesia's Papua province is worth US$250 per cubic meter in the port, $600 or more upon arrival to China—and over US$2200 by the time it winds up as solid wooden flooring in an American store.[1]

The monetary benefits of timber trafficking are high, and the risks of any legal or financial penalty are low. Buyers of wood don't ask questions because they don't have to. No one—neither customers nor governments—is asking them to do so. Under current U.S. law, with very few exceptions, wood imports are legal by default—no questions asked. There is no underlying legal framework, within either domestic law or trade agreements, that prohibits the import or sale of illegally sourced wood products from any other nation. As a result, the millions of dollars invested by the U.S. government, non-governmental organizations and private companies in anti-illegal logging programs in supply side nations are being undermined by our own market and legal system.

The one exception to this lack of legal tools, the Convention on International Trade in Endangered Species (CITES), is exceedingly limited for addressing the larger problem of illegal logging: EIA's analysis of trade data and CITES permits shows that the chief timber species now regulated under CITES—ramin and mahogany lumber (any mahogany products are exempt)—account for less than 0.05% of wood imports to the United States.[2]

This problem is so pervasive that we find it even here in these historic rooms. EIA has learned that the U.S. Capitol building itself came close to hanging Honduran mahogany doors at high risk for illegal origin. Had sufficient 2007 appropriations come through for this project, we would be left to wonder whether the doors opening onto the U.S. House of Representatives were made using endangered trees stolen from the internationally protected Rio Platano Biosphere Reserve in Honduras.

The Environmental and Human Costs

"Illegal logging" refers to the extraction and removal of timber in contravention of applicable laws. Such activities include a spectrum of illegalities ranging from cutting within national parks to transporting without permits, from cutting on steep slopes and riverbanks to over-harvesting or harvesting protected species. The extent of these activities in forests around the world has serious consequences in terms of environmental degradation, social conflict and the rule of law.

Environmental degradation

Illegal logging activities catalyze a chain reaction with major consequences for climate change and biodiversity loss. Some of the greatest damage results precisely

from the export-oriented extraction of valuable timber species from "frontier forests"—the most pristine and extensive forests left on earth.

Consumer demand for high-end hardwood products such as flooring, doors, windows or decks drives the economics of frontier logging. The prime specimens of large, slow-growing species such as mahogany (Swietenia macrophylla), merbau (Intsia spp.), ramin (Gonostylus spp.), Russian oak (Quercus spp.) or okume (Aucoumia klaineana), among others, remain only in remote and intact forests in Asia, Latin America, and Africa. Such forests are national parks set aside to protect habitat for low-density large mammals like jaguars, orangutans or forest elephants, or the world's few remaining vast tracts ofwilderness in the Amazon, the boreal forests of Russia, the islands of New Guinea and Borneo, and the Congo basin. The value of these timber species on international markets provides sufficient incentive for logging syndicates to finance trespass in parks and indigenous territories, falsify harvest and shipping permits, and construct miles of trails or crude roads into the wilderness to access high density stands or even individual trees. The extent and modus of such activities has by now been well documented by EIA and other watchdog organizations, as well as academic researchers and journalists.

This uncontrolled activity triggers a cascade of subsequent environmental degradation. Logging trails destroy hundreds of other trees to reach a few commercially valuable individuals. The creation of infrastructure and temporary logging camps brings an influx of people and economic activity into remote regions. In the short term, this leads to over-hunting of bushmeat or commercial wildlife poaching in surrounding forests; in the long term, settlements can become permanent while habitat for wildlife shrinks behind the agricultural frontier. This chain of events is even more damaging when it occurs in areas occupied by forest-dependent indigenous peoples.

On the other hand, consumer demand for semi-disposable inexpensive wood products encourages manufacturers to cut costs and boost production—driving the large-scale illegal over-harvesting of natural coniferous and hardwood forests from eastern Russia, Indonesia, Honduras, Brazil and elsewhere. This type of deforestation contributes directly to topsoil exposure and subsequent erosion. Intensive illegal logging has been acknowledged as a contributing factor in floods that cost thousands of lives in Indonesia, the Philippines, China and elsewhere in the past decade. It also has the capacity to disturb hydrological and ecological dynamics enough to cause water shortages and higher susceptibility to forest fires. The uncontrolled cutting of Honduras's rich pine forests, for example, has caused what communities document to be the loss of approximately half the water sources in populous western Olancho district.[3]

As the committee is well aware, deforestation and forest fires are a major cause of global greenhouse gas emissions. The UK's recent Stern Review on the Economics of Climate Change found that deforestation accounts for 18.3% of global carbon emissions annually—more than the entire transport or industrial manufacturing sectors.[4] Illegal logging is an integral part of this picture, contributing to deforestation both through the direct removal of forest cover and through the chain of land use change triggered by logging described here. Uncontrolled logging is, in a sense, the 'gateway activity' that leads to a cycle of harm for the forests and the global climate.

The human consequences are no less devastating. Revenue from illegal logging and export trade supports and perpetuates corruption and criminal activities, and is reaped in an atmosphere of fear, intimidation and human rights abuses. Illegal logging in some countries has been used to finance violent conflicts—much like the "blood diamonds" that funded wars in West Africa—while in others it is linked with wildlife and drug smuggling operations. The following examples from around the world hint at the scope of forest crimes both social and environmental in nature.

Examples: Global illegal logging hotshot, and the links to U.S. demand

Indonesia

In perhaps no other country has illegal logging been destructive on such a massive scale—or the focus of so much concern. In June 2006, the U.S. government was spending more than $7 million on initiatives to combat illegal logging in Indonesia, with the private sector chipping in another $13 million via 30 different projects throughout the country.[5] And yet a 2007 U.N. Environment Programme (UNEP) report forecasts that 98% of Indonesia's forests could be lost within 15 years, with lowland forests disappearing even sooner.[6]

Illegal logging in Indonesia is organized, highly profitable crime that continues to operate with almost total impunity for the higher echelons. Despite millions of dollars invested in combating illegal logging by the national and foreign governments, despite a series of crackdowns, arrests, policy initiatives and extensive public atten-

tion to an issue that has cost the country over US$20 billion, a recent survey by EIA and our Indonesian partner organization Telapak confirmed that almost no high-level financiers, senior military or government officials have even been prosecuted, much less convicted, of logging-related crime.[7] The country's forestry minister himself recently proposed Supreme Court review of several judges involved in handing down not-guilty verdicts, openly questioning a judicial system that continues to free criminals in the face of strong police evidence.[8]

These crimes are not only towards the forest but also towards its defenders. Among the world's most infamous timber barons are Abdul Rasyid and his nephews Sugianto, Agustiar and Yadi, whose Tanjung Lingga suite of companies has reaped hundreds of millions of dollars from illegal logging or ramin and other species at Tanjung Puting National Park. In 2000, Rasyid's employees assaulted two EIA and Telepak investigators with head blows, threatened them with death, and had them thrown in jail for three days. In November 2001 Rasyid ordered an attack on investigative journalist Abi Kusno Nachran after his information led to government seizure of three illegal timber shipments. Abi Kusno was hijacked on the road by a gang of hired thugs who hacked him with machetes in the back, arms, and head, and left him for dead.[9] All cases against Rasyid, who until recently was a member of the Central Kalimantan Parliament, have been dropped due to "lack of evidence."

As part of the effort to staunch the illegal flow of its resources, Indonesia enacted a log export ban in September 2001. Following this, many syndicates changed their methods by cutting the stolen wood into sawn timber and concealing it in shipping containers.[10] In response, Indonesia enacted a sawn timber export ban in October 2004, with further strengthening and elaboration of limited exceptions in 2006.

Yet despite a law that makes most sawn timber exported from Indonesia expressly illegal, U.S. trade data show that 1,570 shipments declared on customs forms as Indonesian sawn timber, worth some $30 million, entered U.S. ports between Nov. 2004 and Nov. 2006: more than 2 shipments per day.[11] Eleven U.S. ports comprised 89% of these shipments, with only three ports—Los Angeles, Long Beach and Tacoma, WA—responsible for 51%. This concentrated flow demonstrates how increased enforcement in the U.S. could be both relatively feasible and effective to address an obviously illegal trade stream.

EIA is hopeful that the Memorandum of Understanding signed by the two countries in November 2006 will facilitate such enforcement. As it stands, Indonesia is a shining example of the inconsistency of U.S. policy on illegal logging. The country's environment minister, Rachmat Witoelar, has publicly pleaded with consumer nations to stop buying Indonesia's illegal timber.[12]

Honduras

The United States is Honduras's largest market for wood products, importing over $47 million in each of the last two years in pine lumber and secondary products including mop handles and tomato stakes, as well as valuable hardwood products like mahogany doors and windows.[13]

A host of illegal logging and timber trafficking techniques have been documented by EIA, from fraudulent permits, phony community "cooperatives", and bribe-fueled transport to cutting openly in national parks. The illegal timber trade is used to smuggle narcotics and launder drug money. Export tax evasion is also rife; EIA investigations in 2005 found that declarations may represent only around 50% less of actual timber exported.[14]

Illegal logging in Honduras is closely linked with social conflict and human rights abuses. For more than a decade, the grassroots Environmental Movement of Olancho (MAO) has fought logging on theircommunity lands by companies owned by Lamas, Noriega, and other barons. MAO's struggle has earned the group's members death threats, intimidation and harassment through the judicial system. Between 1996 and 2007, eight members are alleged to have been killed for their activism; on December 20th, 2006, Heraldo Zuniga and Roger Ivan Murillo Cartagena became the latest victims, put up against a town hall wall and shot.[15] At least six members of the organization have fled the country in the past year, fearing for their lives. International outcry over the killings led to the arrest of four local policemen. However, there has still been no trial, nor investigation into possible logging interests behind the crime such as the Sansone company, whose employees MAO has repeatedly denounced for death threats.[16] Sansone is Honduras's second-largest exporter, sending broom and mop handles as well as lumber to U.S. retailers as well as Caribbean markets.

Peru

Peru is the world's principal exporter of mahogany, particularly since Brazil implemented an export ban in 2001. In 2006, this valuable wood comprised roughly

20% of the country's total timber exports by value (a far smaller quantity by volume).[17]

The extent and impact of illegal mahogany logging in the Peruvian Amazon is grave. In the southeastern department of Madre de Dios, home to the world's highest remaining concentration of old growth mahogany, loggers are penetrating the protected territories of several voluntarily isolated, 'uncontacted' tribes, resulting in a rise in violent encounters with casualties on both sides.[18] Advocates fear that contact with loggers will end in deadly conflict or transmission of an infectious disease such as influenza or pneumonia, which could kill the entire tribe. The risk is so high that in March 2007 the Inter-American Court of Human Rights ordered the Peruvian government to implement precautionary measures to protect the uncontacted groups of Madre de Dios.

Local timber barons, increasingly linked with drug traffickers, take brutal advantage of the poverty and isolation of Amazonian communities from Iquitos to Puerto Maldonado.[19] A study conducted by the International Labor Organization in 2004 estimated there to be some 30,000 people living at the time under forced labor conditions linked to logging in the departments of Madre de Dios and Ucayali.[20] This includes men living in a cycle of debt slavery and women working as prostitutes in logging camps.[21]

The Forest Governance Annex to the pending U.S.-Peru trade bilateral contains important measures aimed at strengthening Peru's monitoring and enforcement of timber concessions. However, without a broader commitment to excluding illegal timber from all its trading partners, the U.S. runs the risk that illegal Peruvian mahogany will be sent to Mexico or China to become our doors and furniture just the same.

China

China has become the world's factory for wood products, as with so much else. Its booming demand for raw wood material to transform into furniture and plywood for Western markets is driving illegal logging around the world. China is the world's largest exporter of wood products, exporting over $17 billion in timber products in 2005. This represents almost 500% growth in less than a decade[22]—and the U.S. is the biggest customer by far. In the last 10 years, the United States has increased its imports of Chinese wood products 1290% by value.[23] We imported 40% of China's wooden furniture in 2005 (a trade stream worth $US8.8 billion[24]), and 21% of China's plywood exports last year.[25]

All this production is fueled by imports. One expert estimates that China imports over $US one billion annually in illegally-harvested logs alone, largely from Russia, trailed by Papua New Guinea, Congo Brazzaville and Gabon.[26] EIA and other organizations' investigations show systemic disregard for the legality of raw materials in the Chinese wood imports sector. In 2005, EIA/Telapak undercover investigators posing as buyers spoke with various Chinese traders who described their smuggling and document falsification techniques to evade the Indonesian log ban.[27] In 2004, huge discrepancies between Chinese and Malaysian trade data showed that 58% of the log imports supposedly arriving from Malaysia were actually smuggled overseas from Indonesia—2.7 million m^3 of timber, a total of almost 30% of Indonesia's entire legal harvest for the same year.[28]

As the demand from its wood products industry grows exponentially, Chinese traders' ask-no-questions ethos is cause for alarm. Beyond Indonesia and Papua New Guinea, some of the hotspots most affected by exports to China include:

- Burma [Myanmar]: The world's final remaining stands of old-growth teak (Tectona grandis) are being stripped from Burma's forests to finance a long-standing war between the repressive military regime and the ethnic Kachin rebel army along the country's northeast border with China.[29] The cross-border trade in teak and other valuable tropical hardwoods reached as much as $350 million in 2005, according to Global Witness. It primary ends up in high-end furniture.
- Cambodia: As laid out in devastating detail by Global Witness in their written testimony submitted for this hearing, timber barons directly linked to high government officials and military officers are felling in protected State Forests, cutting protected tree species upon which local people depend for income, clearing vast areas of primary forest under dubious permits for large-scale plantations, establishing illegal factories, and robbing the Cambodian treasury of millions of dollars in revenues through blatant fraud, tax evasion, and smuggling.[30] Members of this network are also implicated in cases of at least three murders and two attempted killings of people working to combat forest crime.

  China is the primary recipient of illegal Cambodian timber. Despite official Cambodian statistics that record no plywood or sawn timber exports in

recent years (most recent statistics available are from 2003-2004), international trade data show China importing approximately US$50 million in plywood and sawn timber between 2003 and early 2007.

- The Congo Basin: Large Chinese companies' illegal logging activities in this region include evading taxes on forest concessions in Gabon and Cameroon; cutting five times the allowable harvest in Republic of Congo; and exporting unprocessed logs in violation of government log export bans.[31]
- Tanzania: The coastal forests and woodlands of Tanzania are disappearing due to overharvesting of tropical hardwoods, much of it illegal and destined for export markets. China is the largest and fastest-growing market: in the second half of 2005, China imported 100% of the logs exported from Tanzania, and 75% of processed hardwoods. Furthermore, trade statistics show that China imported ten times more timber products from Tanzania than what appeared on the country's official export records—in other words, a loss of 90% of the government's revenue, estimated at $58 million dollars annually. The deforestation is having noticeable effects on topsoil erosion and water quality in the main logging districts.[32]
- Russia: Nowhere has China's wood manufacturing explosion been felt more strongly than in the forests of Russia's Far East, whose vast expanses of Korean pine and temperate hardwoods are home to the world's largest cat species, the Amur tiger. Russia alone supplied approximately 26.4 million m^3 in 2005—49% of China's total timber product imports and fully 80% of its logs.[33]. Companies including Wal-Mart, Armstrong and Ikea are supplied by plants located in this border region.[34] The Russian Natural Resources Minister described the situation in this way on a visit in 2007:

  "The impression you get there is that illegal logging has become an everyday economic affair and common practice. Everything is covered with slabs of processed timber; there are saws everywhere with Chinese workers, who as soon as we approach them forget Russian, and Chinese too. Everybody sees it and nobody does anything. "[35]

Extent of U.S. impact

The United States is the world's single biggest importer and consumer of wood products. According to FAO data, in 2005 the U.S. imported 17.2% of global "forest products" exports, which include pulp and paper.[36] This figure rises to 20% once furniture is included.[37] In dollar terms we are speaking of some $56 billion, including all logs, timber, furniture, pulp and paper, or $38 billion without pulp and paper.[38] These figures have grown dramatically: according to ITC data, from 2000 to 2006, U.S. wood product imports overall increased by 58%, with furniture imports increasing by 78%.

How much of this consumption involves wood material of high-risk origin[39]? Of course, nobody declares his product to be "illegal" on a customs form. But estimates converge on approximately 10% of our imports. A recent in-depth analysis of global timber trade statistics, done for the OECD Roundtable on Sustainable Development, estimates that U.S. imports of high-risk wood in 2006 were approximately 28 million cubic meters of round-wood equivalent (RWE). Almost two-thirds of this came from China, followed by Malaysia, Indonesia, and Latin America (primarily Brazilian and Peruvian hardwoods).[40] See Table 1 for a breakdown of the top wood product import streams and source countries, which shows that a substantial portion of U.S. imports come from high-risk sources.

The OECD figure indicates that 10% of the U.S.'s imports, or 2% of the entire annual global trade in wood-based products, is derived from material at high-risk of illegal origin. This 10% figure is corroborated by Seneca Creek Associates' 2004 study for the American Forest and Paper Association, as well as the World Bank and the Royal Institute for International Affairs.[41]

While it is inherently difficult to calculate the amount of illegal material entering U.S. ports, the impact of our national demand is easy to see on the ground, as has been described in the case studies above. Action by American policy makers or American consumers should not depend on knowing exactly how many dollars worth or board feet of this wood enter our borders each year. For critically endangered species like Sumatran rhinos or African lowland gorillas, a few hundred trees cut in the wrong place can mean the difference between survival and population crash. For villagers of northern Burma, several hillsides of old-growth teak support the perpetuation of a bloody military occupation. For the voluntarily isolated Mashco-Piro people of Southeastern Peru, loggers' invasion to steal a few dozen mahogany trees from one riverbank can mean contact with disease that wipes out their entire tribe. Even where the total board feet are small, the damage can be great.

Amending the Lacey Act as a Demand-Side Solution

If we understand illegal logging in the context of corruption, criminal trafficking and international trade as laid out here and in our report "No Questions Asked," then it follows that in order to effectively address the problem, we need to change the equation of risk and return. We need to lower the incentives for illegal trade—through reducing demand and lowering profit margins—while raising the risks.

Legislative action on illegal logging in consumer countries is not a replacement for, but a reinforcement of, domestic enforcement in producer countries. On the demand end, the purpose of an effective law must be judged by how well it can perform the following broad functions: (1) close market access for illegal timber and wood products to the most lucrative, hard-currency destinations for these products, (2) create the incentive for high standards of due diligence, and (3) level the playing field for businesses that want to do the right thing, without unduly burdening them.[42] An effective law must also be feasible to implement.The legislation in question at this hearing does precisely this. EIA, after extensive analysis based on over 20 years of field experience, believes that amending the Lacey Act is a powerful and elegant way to address illegal logging and worldwide associated trade from the demand side. The Lacey Act, in essence, changes the incentives for wood products companies to ask questions. And in the complex supply chain that characterizes contemporary international trade in timber and wood products, these questions will ripple down the chain: from American companies who intend to abide by their domestic laws, to the contracts they sign with Chinese manufacturers, to the inquiries these manufacturers' suppliers make with their Indonesian or Cameroonian or Russian sources.

Moreover, the Lacey Act does this without being a radical departure from existing law, or an unduly burdensome trade measure. For one hundred years it has functioned to catch the worst of the worst, the serious offenders, and therefore has high burden of proof standards to prove "intent" for any criminal penalties. Further, it does not require specific proof of legality for each shipment. Rather, an amendment of Lacey sets up a reasonable set of penalties and subsequently relies on American companies' essential integrity, creativity, and desire to comply with the law, to set in motion the necessary steps that will transform the market for wood products into a place where questions get asked.

EIA fully supports the intent of the Legal Timber Protection Act introduced by Congressman Blumenauer, Weller and Wexler. We recommend the inclusions of several modifications to the language that were agreed upon through intensive consultation with stakeholders among the industry, environmental, and enforcement communities, and introduced in the Senate by Senators Ron Wyden and Senator Lamar Alexander as S. 1930, the Combat Illegal Logging Act of 2007.

These modifications include a provision for basic declaration requirements that would include the species, country of origin, quantity and measure, and value of the plant import. These requirements are modeled after existing regulations for wildlife imports currently regulated by the Lacey Act, and resemble declarations for many other imported goods. They provide basic transparency for wood shipments. The declaration will have critical value for combating illegal logging by: 1) encouraging importers to ask basic questions regarding the origin of their timber and timber products; 2) providing information at the point of import that will allow U.S. authorities with limited resources to do efficient, targeted inspections and enforcement; and 3) helping enforcement agents to immediately identify "low-hanging fruit," such as timber expressly prohibited to be exported. The Act's declaration requirements will not be unduly burdensome to industry, including the manufacturing sector. Factories manufacturing wood products, in China or elsewhere, are capable of providing this information to buyers. They currently don't provide it because they have not been asked to.

Passage of this law will bring the United States in line with international efforts on this issue. The commitments expressed by G-8 leaders at the 2005 Gleneagles summit crystallized a growing awareness that demand-side measures are needed to effectively curb the roots causes of illegal logging. Today the consumer markets of the European Union, Japan, New Zealand, and Australia are implementing or considering a variety of policies and initiatives to encourage demand for legal timber.

As long as the U.S. lacks similar policies to prohibit illegally sourced wood, our market is an enormous open door for suspicious material, undermining other countries' attempts to address the problem. Conversely, if the world's largest wood products market were to signal that it was closing this door, many people believe this action could provide the 'tipping point' necessary to bring rapid change in global logging and tracking practices.

Please see Table 2 for our comparison of the characteristics that legislation to effectively curb demand for illegally sourced timber and wood products should ideally

possess, and the characteristics possessed by the amendments to the Lacey Act offered in the current legislation.

The market signal

Passage of U.S. legislation to curb imports of illegal timber would have a rapid and significant effect on the global market.

The Chinese wood products industry's ability to evolve is a key piece of the puzzle. By all accounts, the current state of the Chinese industry presents a considerable challenge to companies and other stakeholders trying to create supply chains that ensure exports of legal or sustainable wood. A recent evaluation by Tropical Forest Trust of the potential for guaranteeing legal supply in Chinese wood products pointed to various obstacles, but emphasized that Chinese manufacturers are extremely flexible and quick to adapt to new business models if they prove successful. The study concludes, "it only takes a few examples of 'first-movers' who are seen to be gaining an advantage by changing the way they operate for more companies to move in that direction."[43]

EIA investigations have shown the untapped potential to improve timber sourcing in the private sector. The response of retailers, importers and manufacturers to documented illegalities or penalties under law demonstrates the capacity for rapid change in the industry. In 2003, EIA/Telapak documented several firms exporting baby cribs made of illegal ramin to the U.S. With this illegal flow brought to U.S. authorities' attention, agents were able to seize several illegal ramin shipments in 2004. (The U.S. government has authority to take such action for the few timber species listed on CITES. Unfortunately, these species in total account for less than 0.05% of total U.S. wood products imports.) When EIA/Telapak investigators went back to China in 2004 and met with a major producer of baby cribs, he had completely switched his wood sourcing for baby cribs from endangered ramin wood to legal New Zealand plantation pine.

Conclusion: the need for Congressional action

"Expecting or asking one country to combat illegal logging while at the same time receiving or importing illegal logs of course does not support efforts to combat these forest crimes. In fact ...allowing import and trade [in] illegally cut timber and associated products could also be considered as an act to assist or even to conduct forest crime."

Mohamad Prakosa, Indonesia's forest minister, 2003

Some people will try to argue that illegal logging is not a problem of international trade, that illegal logging is done by poor people trying to find firewood, that little of this wood even enters the export stream, much less the U.S. market. Without denying that deforestation is a complex issue linked with poverty, EIA respectfully submits that these arguments miss the point. The illegal logging which concerns us today is export-oriented extraction, of a scale that can only be organized by networks of financiers, brokers, and buyers. To take just one example from EIA and our partner Telapak's investigations, in 2005 we documented 300,000 cubic meters of logs of a species called merbau (Intsia spp.) being smuggled from Indonesia's Papua province into Hong Kong and China—every month. This is an amount worth $600 million at western retail prices.

A successful response to this sort of illegal activity must come from both ends. The international community must support, and demand, on-the-ground efforts by governments in producing countries to curb illegal logging and investigate and prosecute the timber barons within their borders. But countries like Indonesia and Peru and Papua New Guinea cannot cut off the flow of illegal wood products while the United States and its market allies continue to nourish it with billions of dollars and a no-questions-asked import policy. We need to harmonize our domestic policies with the impacts of our consumption.It is for this reason that legislation to prohibit the import and sale of illegal timber is so vital at this juncture. Not only is there consensus among environmentalists, governments, businesses and public citizens that illegal logging and timber traffic is a serious problem, but there is remarkable agreement about what needs to be done. We need an appropriate demand-side legal framework that will empower enforcement agencies with new tools and resources, and that will level the playing field for companies who want to do things right. We need the largest wood products market in the world to own up to its role in the illegal logging problem and begin to ask the necessary questions.

Thank you.

Table 1: US Wood Product Import Streams Greater than US$300 million in 2006

import streams		*sums by 4-digit HTS code*		*top exporting countries (value in millions)*
Description	***HTS***	***2005***	***2006***	
wooden furniture	*9403**	*10,316,787,155*	*10,765,402,742*	China (4900+); Canada; Vietnam; Malaysia; Indonesia; Italy
sawnwood (coniferous)	*4407*	*8,267,423,547*	*7,612,178,244*	Canada (6000+); Germany; Chile; Sweden; New Zealand; Brazil
wooden-framed seats	*9401**	*3,604,252,911*	*3,914,786,191*	China (2100+); Mexico; Italy; Canada; Malaysia; Indonesia
joinery (doors 27%, "other" 52%)	*4418*	*2,691,319,323*	*2,840,524,158*	Canada (1700+), China, Brazil, Chile, Mexico, Indonesia
plywood	*4412*	*2,302,721,593*	*2,570,673,894*	China (982), Canada, Brazil, Malaysia, Indonesia, Russia
particleboard & OSB	*4410*	*2,963,521,244*	*2,168,468,378*	Canada (2048); Mexico, Germany, Brazil, Ireland, China
continuously shaped (flooring, siding, molding, dowel rods, etc.)	*4409*	*1,588,314,630*	*1,740,815,462*	Brazil (460), China, Chile, Canada, Mexico, Malaysia
fibreboard	*4411*	*1,385,802,928*	*1,350,612,917*	Canada (411), Chile, Spain, Germany, Belgium, China
"other" wood products	*4421*	*1,292,190,467*	*1,284,639,813*	Canada (445), China, Brazil, Mexico, Taiwan, Italy
sawnwood (hardwood; ~40% tropical)	*4407*	*720,888,923*	*710,161,504*	Canada (257), Brazil, Peru, Malaysia, Ecuador, Germany
marquetry, caskets, statuettes, non Ch. 94 furniture, etc	*4420*	*519,612,084*	*550,517,995*	China(394), Thailand, Mexico, Indonesia, India, Vietnam
veneer	*4408*	*575,049,433*	*542,873,919*	Canada (372), Brazil, Germany, Italy, China, Ghana
wooden frames (pictures)	4414	*405,414,738*	*445,282,267*	China (252), Thailand, Indonesia, Mexico, Canada, India
roundwood (all)	*4403*	*347,944,982*	*356,283,816*	Canada (318), Germany, Chile, Brazil, China, France

*note: only 6-digit HTS classes that denote wood products are included (e.g. 940161 and 940169; 940330-940360).

Table 2: Characteristics of an Effective Legal Mechanism to Combat Illegal Logging and Associated Trade

Characteristics of an Effective Law	***Does a Lacey Act amendment have these qualities?***
Acknowledge and support existing laws in producer countries	Yes. Basic structure of law is to recognize foreign law violations as the trigger for Lacey Act violations.
Be capable of addressing the manifold types of illegality in the timber sector	Yes (with caveat). Lacey Act cases are triggered by breaking any underlying law, if this can be proven. Caveat: the bills currently before U.S. Congress present language whose scope is focused on laws related to illegal harvest and trade. For example, labor laws are not covered.
Support and strengthen existing domestic enforcement efforts in producer countries	Yes. Prosecution under Lacey requires cooperation with producer country law enforcement agencies; proceeds from forfeiture are sometimes shared with foreign governments to defray costs.
Raise the risk for abetting illegal activity	Yes. Lacey creates financial and criminal penalties for violating underlying laws; penalties vary based on extent of company's prior knowledge.
Create incentives for companies and buyers to perform due diligence and improve tracking and monitoring systems	Yes. Companies shown to be exercising "due care" – internal policies and tracking systems, independent certification, participation in stepwise programs, etc. – protect themselves from risk of most possible charges.
Decrease foreign traffickers' market access and profit margins	Yes. Increased incentives to ask questions make U.S. companies more likely to seek out trusted legal sources.
Increase transparency and information available to law enforcement officials	Yes. Currently proposed Lacey amendments introduce a declaration requirement that includes species, country of harvest, and other information that enables more targeted law enforcement and data collection.
Give businesses guidance on what constitutes 'legal'	Yes. Currently proposed Lacey amendments articulate the range of laws that will be considered underlying violations. Major illegalities such as cutting in protected areas or exporting despite log bans are all covered, while laws unrelated to illegal logging or plant protection are excluded.
Avoid penalizing or unduly burdening businesses that are trying to do the right thing	Yes. The "knowledge and intent" requirements and "due care" provisions, as well as existing case law precedent and U.S. law enforcement agencies' limited resources, all mean that Lacey targets the worst offenders.
Be flexible over time, given the complexities of the global timber trade	Yes. Lacey does not tell businesses how to avoid violating the law – it leaves the "how" up to them. Currently proposed declaration requirements are limited to basic information, and are designed to be re-evaluated after an initial period of two years.
Be feasible to implement, for both business and the government.	Yes. The fisheries and wildlife trade industries have worked with Lacey for a century, and developed appropriate contracts and due diligence measures such as payment-upon-customs-clearance. The government, with intelligence-led enforcement work, could make effective use of a limited number of inspectors in key ports to cover a large percentage of wood products trade. This law functions as much by market signal as by daily enforcement, by increasing the risks for wrong-doing and sending a ripple of questions down the international supply chain.

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[6] Nellemann, C., et al. (Eds). 2007. The last stand of the orangutan – State of emergency: Illegal logging, fire and palm oil in Indonesia's national parks. United Nations Environment Programme, GRID-Arendal, Norway.
[7] Environmental Investigation Agency/Telapak. 2007. The Thousand Headed Snake: Forest Crimes, Corruption and Injustice in Indonesia.
[8] Apriadi Gunawan. 4 May 2007. Sumatra courts irk police with 'iffy' verdicts *The Jakarta Post*.
[9] Straits Times. 10 March 2002. Timber trader's thugs did this to him. http://ecologyasia.com/news-archives/2002/mar-02/straitstimes.asia1.com.sg_asia_story_0,1870,107415,00.html
[10] Environmental Investigation Agency/Telapak investigations.
[11] Port, Import, Export Reporting Service (PIERS) data.
[12] Reuters. 6 Feburary 2007. Illegal Logging hits Asian forests, orangutans: U.N.
[13] ITS data search.
[14] EIA. 2005. The Illegal Logging Crisis in Honduras.
[15] Amnesty International alert. Honduras: Environmentalists killed in Olancho department. AI Index: AMR 37/001/2007
[16] Movimiento Ambientalista de Olancho. 22 Diciembre 2006. Comunicado No. 28.
[17] Calculation based on market prices and annual mahogany quota compared to total trade statistics available from ADEX.
[18] Fagan, C. and D. Shoobridge. 2007; Fagan, C. and D. Shoobridge. 2005. An Investigation of Illegal Mahogany Logging in Peru's Alto Purús National Park and its Surroundings. http://www.parkswatch.org/spec_reports/logging_apnp_eng.pdf
[19] See e.g. de la Cal, J.C. 19 August 2007. La Caoba Sale Cara. *El Mundo*
[20] Bedoya Garland, E. and A. Bedoya Silva-Santisteban. 2005. Trabajo forzoso en la extracción de la madera en la Amazonia peruana.Lima: OIT/Oficina Subregional para los Paises Andinos..Documento de Trabajo 193.
[21] See e.g. de la Cal, J.C. 19 August 2007. La Caoba Sale Cara. *El Mundo*
[22] White, A. et al. 2006. China and the Global Market for Forest Products: Transforming Trade to Benefit Forests and Livelihoods. Forest Trends.
[23] Environmental Investigation Agency analysis of ITC data.
[24] Goodman, P.S. and P. Finn. 1 April 2007. Corruption Stains Timber Trade. *The Washington Post*, page A01.
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[35] quoted on BBC. 22 May 2007. Siberian resource watchdog head sacked over illegal logging. Source: "Novosti" news report by Russian Channel One TV.

[36] FAO data shows global exports of "forest products" were valued at $185,724,802 in 2005, of which the U.S. imported $31,997,857. This figure includes roundwood, sawnwood, wood-based panels (plywood, veneer, particleboard, fibreboard, MDF), wood pulp, paper and paperboard. The FAO figures for U.S. imports by value are lower than U.S.'s own ITC data.
[37] Contreras-Hermosilla et al. 2007. The Economics of Illegal Logging and Associated Trade. OECD Round Table on Sustainable Development
[38] ITC search for following HTS codes: Ch. 44, parts of Ch. 94, 94, 96. List available upon request.
[39] Given the nature of wood processing it is extremely difficult to identify if a given piece of wood is, itself, derived from illegal sources. The terms 'suspicious' and 'high-risk' origin are commonly used to denote material that has a high likelihood of having been cut, transported and/or traded illegally.
[40] These figures include furniture, pulp and paper, and secondary manufactured products . Analysis available in Contreras-Hermosilla et al. 2007, and at http://www.globaltimber.org.uk/G8IllegalTimber.htm
[41] Seneca Creek Associates. 2004. Illegal Logging and Global Wood Markets: The Competitive Impacts on the U.S. Wood Products Industry; Royal Institute of International Affairs. 2003. "Scale of illegal logging." http://illegal-logging.info/Scale.htm.. World Bank. 2006. Strengthening Forest Law Enforcement and Governance: Addressing a Systemic Constraint to Sustainable Development. Report No. 36638-GLB. Available at http://go.worldbank.org/FMKUFABJ80.
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STATEMENT OF CRAIG S. FORESTER, VICE PRESIDENT AND GENERAL MANAGER, REX LUMBER COMPANY, ON BEHALF OF INTERNATIONAL WOOD PRODUCTS ASSOCIATION

Mr. FORESTER. Thank you, Madam Chairperson, Representative Brown and Representative Blumenauer. Good morning. My name is Craig Forester, Vice President and General Manager of the Rex Lumber Company. My company is headquartered in Massachusetts, and we employ more than 350 people in manufacturing operations in four states. I also serve as Chairman of the International Wood Products Association Government Affairs Committee.

Today, I speak on behalf of a coalition of American wood suppliers, distributors and users of legal imported wood. We are united

in condemning illegal logging. The future of our businesses depends on the legal and sustainable supply of imported wood.

Members of our coalition include the National Association of Home Builders, the National Federation of Independent Business, National Lumber and Building Material Dealers Association, the American Home Furnishings Alliance, the National Marine Manufacturers Association and the International Wood Products Association. As this coalition demonstrates, my company is not alone. Together we represent nearly 745,000 businesses.

Housing, cabinetry, millwork, recreational vehicles, boats and furniture industries all use imported wood in their U.S. manufacturing facilities supporting hundreds of thousands of skilled U.S. jobs. My family's small business was started by my grandfather in 1946. From day one, Rex Lumber Company has been a leading advocate for environmental protection.

We are certified by the Forest Stewardship Council and share their economic, social and environmental concerns. I give you this background to let you know that Rex Lumber Company is playing by the rules. I am proud of our business and our environmental leadership. We source legally, we trade legally. I travel regularly to Central and South America to visit our longstanding suppliers and to interview possible suppliers.

My testimony before you today will show you that while we share the ideals of H.R. 1497 we are very concerned with the unintended consequences of this legislation as written. On behalf of the coalition, I respectfully request the Subcommittee to amend H.R. 1497 to address three specific concerns.

First, define any foreign law to address only natural resources laws and regulations. Second, modify the proposed new documentation requirement to be consistent with current U.S. Customs regulations. Third, add an innocent owner provision. My written testimony goes into greater detail on all three of our specific concerns. I want to focus on adding an innocent owner provision.

It is important to note that under the provisions of H.R. 1497 U.S. importers, manufacturers and distributors are all held responsible for illegal acts overseas, violations that they would have no reasonable expectation to know about, much less the underlying laws that exist in all foreign countries. The problem is this bill provides no protection for innocent owners in the supply chain who handle imported wood products.

Innocent owner is a simple concept but an important one. In essence, it puts the burden of proof on the government. It reinforces the key principle of innocent until proven guilty. I specifically would like to respond to three comments I have heard related to innocent owner. First, Lacey never had protection for innocent owner. Innocent owner had been thought available in Lacey until a Court case in 2005, the Blue King Crab case. We just want to put this protection back.

Second, I have heard that I don't have to prove legality to clear U.S. Customs. This is true, but how do you disprove a negative should the government seize your goods? That is, how do you prove no law was violated overseas when you are already in possession of legal documents? Third, that including innocent owner would gut

this bill. False. Innocent owner does not prohibit the government from taking goods that violate foreign laws.

The government can still prosecute with innocent owner provisions. In fact, the Civil Asset Forfeiture Recovery Act, or CAFRA, and the Brownfield Revitalization Act both specifically had given innocent owner provision and neither has stopped the government from prosecuting cases. I want to conclude with a caution. To save forests we must face their biggest threat: land conversion.

The World Bank noted, and I quote, "that more than 90 percent of the 1.2 billion people living in extreme poverty are dependent on forests for some part of their livelihoods." Without any other incentives they chose to clear cut and burn their forests for cattle ranching, agricultural purposes and fuel wood, life's basic necessities.

Forests need to remain forests, and the best way to do that is to provide economic incentives for countries to harvest them wisely and sustainably. Let us amend the bill to make sure we do no harm to legal businesses in the United States, and we don't give any extra incentive for these developing countries to convert their forests to farms.

Unintended consequences of well-intentioned legislation are consequences nonetheless. In addition to making these changes I urge the U.S. Government to provide more financial and technical assistance to developing countries to enforce their laws and to prosecute the offenders. Thank you for this opportunity to testify and for your consideration. I look forward to your questions.

Ms. BORDALLO. Thank you very much, Mr. Forester.

[The prepared statement of Mr. Forester follows:]

Statement of Craig S. Forester, Vice President and General Manager, Rex Lumber Company, on behalf of the International Wood Products Association and America's Imported Wood Suppliers, Distributors, and Users

On behalf of the member companies of the International Wood Products Association (IWPA) and the coalition of America's Imported Wood Suppliers, Distributors, and Users of legal imported wood, we appreciate the opportunity to submit testimony on H.R. 1497 and its proposed mark-up to a House companion to S. 1930. Both bills propose amending the Lacey Act to include imported wood products.

For the record, IWPA and its coalition partners are united in condemning illegal logging. Our businesses depend on legal, sustainable trade in wood products in order to build homes, furniture, flooring, kitchen cabinets, boats, recreational vehicles, and other wood-based products for American consumers.

We applaud the many efforts Congress has funded to help developing wood exporting countries that are struggling to enforce their forestry laws. It is with regret that we cannot support H.R. 1497 or its probable mark-up companion to S. 1930.

Nearly 745,000 businesses are represented by this coalition of:

- National Association of Home Builders
- National Federation of Independent Business
- National Lumber and Building Material Dealers Association
- American Home Furnishings Alliance
- National Marine Manufacturers Association
- International Wood Products Association

These associations have serious concerns about the unintended consequences of how H.R. 1497 or a House companion to S.1930 will affect American importers, manufacturers, and users of imported wood.

The coalition respectfully requests the Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans address three concerns in its consideration of this legislation.

1. Define "Any Foreign Law"

The lack of specificity in the term "any foreign law" is troublesome. Would this allow prosecutions if a sawmill in a foreign country overloads its trucks when trans-

porting wood to the port? How would an importer or supply chain member know what is required under "any" foreign law?

Would there be a scenario where imported wood from Canada was subject to Lacey provisions because of a provincial government's dispute with First Nation citizens over the fishing rights in a concession?

Courts have interpreted the phrase "any foreign law" extremely broadly in the context of fish and wildlife taken in contravention of any foreign law. See e.g., United States v. McNab, 331 F. 3d 1228, 1235-39 (11th Cir. 2003), interpreting "any foreign law" to include non-statutory provisions such as foreign regulations, resolutions, or decrees; United States v. One Afgan Urial Ovis Orientalis Blanfordi Fully Mounted Sheep, 964 F.2d 474,477-78 (5th Cir. 1992), holding that "any foreign law" need not have been enacted for the protection of wildlife but need only to relate or refer to wildlife and that the Pakistani Constitution falls within the term.

We need language in this bill that directly relates to natural resources so we are not at the mercy of overzealous interpretations of what constitutes the word "any."

2. Eliminate Additional Documentation Requirements

Our product comes to the U.S. clearing Customs on both exit and entrance. Sovereign governments issue documents, permits, and paperwork that allow products to be traded legally under international and national laws and regulations. Our government accepts those documents as legal upon entry at our nation's borders, just as we ask other governments to accept our country's issued documents.

A requirement to identify the countries where sourcing and processing occurred should not be included. This requirement goes beyond the Customs regulations and adds significant complexity to Country of Origin classifications. Customs officials at the ports are already overtaxed with national security inspections. There is also some question as to which government organization is going to collect the data and manage it a meaningful manner.

Most importantly, how will a database hinder illegal logging in foreign countries?

There are existing tools both in government and in the private sector already available to determine trade flows of wood products.

3. Add "Innocent Owner" Protection

This legislation provides no protection for "innocent owners" in the supply chain who handle imported wood products. "Innocent owner" is a simple concept but an important one. This is a widely acceptable standard used in other areas of federal and state jurisprudence. Without an "innocent owner" provision, supply chain members are vulnerable to civil forfeiture which could cause the loss of their businesses and personal savings. Cleary, such damage is as punitive as incarceration.

Under Lacey, the entire supply chain handling imported plant material is held responsible for illegal acts of which they would have no reasonable expectation to know the violation much less the underlying laws that exist in all foreign countries. Courts have expanded the liability and coverage of Lacey to create a situation where there is "culpability with no accountability." Recent case law effectively exempts Lacey Act forfeitures from the "innocent owner" defense. In United States v. 144,744 Pounds of Blue King Crab, 410 F.3d 1131 (9th Cir. 2005), the Ninth Circuit held that importers of crab that was transported on a foreign vessel which failed to maintain its vessel monitoring system in violation of Russian law could not assert an "innocent owner" defense in a forfeiture action.

Adding an "innocent owner" provision will not unduly hinder the United States Department of Justice from prosecuting cases. "Innocent owner" does not prohibit the government from taking goods that violate foreign laws. The government can still prosecute with "innocent owner" provisions. In fact, the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) and the Brownfields Revitalization Act both specifically give an "innocent owner" defense, and neither has stopped the government from prosecuting cases.

In essence, "innocent owner" puts the burden of proof on the government. It reinforces the key principle of "innocent until proven guilty."

In an effort to restore the "innocent owner" defense in light of the Ninth Circuit's opinion, any proposed amendment to the Lacey Act should include language specifically adopting the "innocent owner" defense set forth in the CAFRA.

The proponents of this legislation say that legality does not need to be proven to clear U.S. Customs and to import goods. This is true. However, how does an importer or a supply chain member disprove a negative should the government seize his goods? That is, how does he prove no law was violated overseas when he is already in possession of legal documents?

In recent weeks, several articles have been published about illegal logging in Canada and in the U.S. If the Lacey Act were amended, how would the domestic timber industry prove that no law has been violated anywhere in their supply chain?

Most of the businesses represented by this coalition are small and family owned. We are not "Big Timber" or "Big Paper". We are mom and pop businesses who hope to someday pass on our customers to the next generation.

We implore the members of the committee to amend this anti-small business bill to protect "innocent owners" and save U.S. jobs.

Wood Trade is Unique

In our consultations with government officials and Congressional staff, we have been challenged with the question, "The Lacey Act works for animals and fish, why not wood?"

Wood products go through transformations that have no parallel in animals or fish. We represent commercial industries that have many steps in the chain for transformation of product, unlike the commercial fishing industry where commercial boats catch and process at the site of harvest. Nor can we be compared to the individual hunter or collector who may personally and knowingly pursue a particular specimen on the wrong side of the law. Wood products go through many transformations, in many countries. For example, logs are harvested in the U.S. and exported to Vietnam for primary processing. The veneer shipped to China and made into furniture for ultimate export back to the U.S. Tracking that U.S. log from point of harvest in Pennsylvania and back to the point of import is incredibly complex.

Illegal Logging Causes and Cures

The International Wood Products Association and its coalition partners are committed to putting in place comprehensive solutions to the illegal logging problem. We believe there are already laws in place to stop the importation of illegal material into the United States.

Solving the illegal logging problem is about stopping the problem at its source—in the country of origin before the material can enter into international trade.

The root causes have nothing to do with importers or U.S. trade. A collaborative report by Seneca Creek Associates and Wood Resources International states, "The suspicious volume of round wood that enters international trade represents on the order of just 1 percent of global production for both softwood and hardwood."

Instead of focusing on criminalizing U.S. citizens involved in the importing and building trades, policy should address issues causing illegal logging—poverty, forest governance, societal problems, and civil conflicts.

The World Bank noted that "more than 90 percent of the 1.2 billion people living in extreme poverty [are] dependent on forests for some part of their livelihoods." Without any other incentives, they choose to clear-cut and burn their forests for cattle ranching, agricultural purposes, and for fuel wood—life's basic necessities.

Enacting H.R. 1497 or a House companion to S. 1930 will not end deforestation or illegal logging because it does not get to the root of the problem. These approaches may actually make the problem worse as it will add costs to forest management. When impoverished communities see no future in forests, they burn them down to make the land available for planting crops and ranching.

We strongly feel the best way to combat illegality is by enforcing the laws in place. By definition, illegal logging is not legal; therefore, let us work with the foreign governments of most interest and concern to make sure there is great compliance with existing laws.

If the United States is going to position itself as a partner to countries that have problems with illegal logging, it must do so as an honest broker seeking good resolutions and not because it is responding to some domestic industries that are seeking to exploit illegal logging issues as a push for protectionist measures to limit competition.

It does no good to create an illegal logging remedy that is in practice a method to reduce competition from imported goods. Such a remedy merely becomes an instrument of protectionism that undermines U.S. competitiveness, hurts millions of American consumers, and penalizes small businesses.

This bill, as written, does not move us to where we need to be to end illegal logging around the world. Our coalition believes it is necessary and appropriate to utilize bilateral, regional, and multilateral agreements to strengthen commitments in the areas of law enforcement, judicial capacity building, and technology. The U.S. should work with foreign governments on the ground through bilateral trade agreements, such as the Peru Free Trade Agreement with its illegal logging annex; Memorandums of Understanding, like the current MOU with Indonesia; the U.S.-China Strategic Economic Dialogue Task Force to Create Bilateral Agreement Addressing

Illegal Logging and Associated Trade; and the President's Initiative Against Illegal Logging (PIAIL). If this legislation is an attempt to influence wood products trade with China, then please propose a trade bill to deal with China and do not enact legislation that will harm legal businesses while doing nothing to protect the forests from being converted to agricultural use.

Conclusion

The International Wood Products Association condemns illegal logging. This industry's long-standing support for sustainable forest management is evidenced by IWPA's Code of Conduct and Board-approved Statement on Illegal Logging developed in 1994 and 2002, respectively—among the first policy statements adopted about the issue by any organization.

Despite a desire to be proactive on the issue, IWPA and its coalition partners oppose H.R. 1497 or a House companion to S. 1930 as currently drafted to criminalize the otherwise legal importation of wood products where the imports are found to have been taken in violation of "any foreign law." These measures would extend civil and criminal penalties under the Lacey Act to U.S. citizens who are in possession of plants that violate "any foreign law," even when the U.S. citizen is an "innocent owner" and has relied upon certifications of the exporting country.

Expansion of the Lacey Act as suggested by H.R. 1497 or a House companion to S. 1930 would create substantial uncertainty for various industries lawfully engaged in and reliant on the importation of wood products and other plant materials. Such uncertainty would result because of the broad applicability of Lacey Act civil and criminal penalties to individuals within the chain of custody of plant materials that, unbeknownst to them, may be in violation of "any foreign law." As discussed previously, U.S. federal courts interpret the term "any foreign law" extremely broadly, in contravention of the original intent of the Act.

During the 1981 Senate hearing on the Lacey Act Amendments, Dr. F. Eugene Hester, Acting Director of the U.S. Fish and Wildlife Service, addressed the intent of the amendments:

> "We do not wish to hinder legitimate trade in wildlife or wildlife products. We believe that healthy, viable, sustaining wildlife populations should be harvested and trade promoted. It is the destructive poaching of fish and wildlife that must be controlled..."

Thus, the current efforts to amend the Lacey Act, which would hinder legitimate trade in wood products run counter to the intent of the statute.

The National Stolen Property Act, Cultural Property Implementation Act, Convention on International Trade in Endangered Species, Customs laws, and existing money-laundering statues are among the tools readily available to the U.S. government to prosecute the "bad actors" or to deal with timber species which are actually at risk. In addition, bilateral arrangements can be designed to provide for enforcement by the U.S. of other countries' illegal logging laws. Two examples are a Memorandum of Understanding signed with Indonesia and the illegal logging annex in the Peru-U.S. Free Trade Agreement.

Forests need to remain forests, and the best way to do that is to provide economic incentives to countries that sustainably manage their forests. Using tropical forest products is the best tool in our kit to promote forest health, encourage legal trade, and promote economic development in poverty stricken nations.

The benefits will also be seen in the U.S. marketplace and in our employment numbers. In 2006, over $23 billion worth of legally traded wood and wood products entered the U.S., a 38-percent increase over 2003. Imported wood products are value-added in the U.S. by U.S. workers for U.S. consumers. Housing, flooring, decks, cabinetry, millwork, recreational vehicles, boats, and furniture industries all use imported wood in their U.S. manufacturing facilities. The demand for products of a certain look, durability, availability, and price is at the center of our market economy. As market demand for imported woods and other goods rises, so do jobs. From port to highway, producer to distributor, and retailer to end-user, hundreds of thousands of family incomes are made possible by international trade, including legally sourced imported woods.

Forest conservation and legal trade are goals that we all share. Unfair policy pushed by alliances seeking political gains and market advantage should not supersede them.

Thank you for this opportunity to testify and for your consideration. We look forward to working with the Subcommittee as it reviews H.R. 1497.

Ms. BORDALLO. Now, consistent with Committee Rule 3[c], the Chairwoman will now recognize members for any questions they

may wish to ask the witnesses allowing five minutes each for each member. Should the members need more time we will have a second round of questions. I would like to begin first with Ms. Sobeck.

In your testimony you note that the Justice Department believes that existing U.S. laws do not adequately address the problem of trafficking in illegally logged timber and that amending the Lacey Act is a sensible way to provide the legal authority that is needed.

Can you give us some examples where the Department was aware of illegal timber being imported but you were unable to prevent it from entering the U.S. due to inadequate legal authority? How would proposed amendments to the Lacey Act change that?

Ms. SOBECK. Yes, Madam Chairman. Just I think an easy hypothetical. If there is a shipment of timber that we have found out from foreign authorities was harvested illegally in the foreign country, and it is in the process of being imported into the United States, if that timber is of a species that is not listed under CITES it is our view that there is no provision of U.S. law that would prevent its importation as long as it was truthfully and appropriately declared upon entry.

I mean, obviously if somebody lies on their Customs forms we have a means of going after them, but if it is a CITES protected species we would not have a Lacey Act enforcement action, but we could bring an enforcement action under the Endangered Species Act or the smuggling prohibitions. In the absence of CITES listing there is no provision of U.S. domestic law that would prevent the importation of illegally harvested foreign timber in our view.

Ms. BORDALLO. Let me just follow-up here. Would the sawn timber imports from Indonesia mentioned by Mr. von Bismarck be an example, would you say?

Ms. SOBECK. If that timber were not a CITES listed species of timber that would be an example, yes.

Ms. BORDALLO. Mr. von Bismarck, would you like to add to that question, please, in terms of the problems that you are seeing now?

Mr. VON BISMARCK. Yes. I think that is what I was referring to with one hand tied behind our backs. I think that the efforts by the United States government under the President's initiative against illegal logging, the efforts by our various agencies, have been very well-received and very important.

Unfortunately, the monies spent and the efforts spent have been undermined by the fact that while we are, for example, training prosecutors in Indonesia, for example, we are on this end financing unwittingly the crooks that they are supposed to be going after. It is only with a comprehensive approach that we can make our hard work on the ground effective, and this is what is missing.

Ms. BORDALLO. Thank you very much. I have a second question for you, Ms. Sobeck. Opponents of the bill claim that by amending the Lacey Act as proposed it is placing an unfair burden on importers of wood and wood products by requiring them to be accountable for foreign logs. You note in your testimony that importers of fish and wildlife products have been subject to similar accountability requirements for more than two decades.

How are these situations similar, and what new requirements were placed on fish and wildlife importers in 1981 when the law

was amended? Did it prove so burdensome that they were unable to continue their imports?

Ms. SOBECK. Well, I can't speak for industry, but I think that we have found with respect to fish and wildlife that Lacey has been a good tool and that the burden on the government is quite high in proving a criminal case. We do have an obligation to prove knowledge generally of the foreign law or that a person or entity in the exercise of due care should have known about a foreign law and that in the absence of that level of knowledge we would not be imposing or seeking to impose any sort of criminal sanction.

The standard of due care varies by what line of business the person or the entity is in, whether they are regularly engaged in business that relates to importing or commerce in foreign fish and wildlife, and if this were extended to plants or timber products that would be the case as well, but the government has quite a burden in proving a criminal case. So we from a law enforcement point of view have not seen that this has been a big problem for the industry.

I defer to my colleagues who were testifying here today about their views about whether the documentation would be burdensome for them or not. It is interesting to me that they said that they did not think that it would be.

Ms. BORDALLO. Do any of the other witnesses wish to comment on that?

Mr. FORESTER. I would like an opportunity to respond.

Ms. BORDALLO. Go ahead.

Mr. FORESTER. Thank you. I appreciate the point of view of Justice. I think the Lacey Act as it applies to fish and wildlife forgets the fact that the supply chain in lumber is far longer and more complex than the harvesting of fish and the processing of fish and wildlife at the point of harvesting.

The amendments that we are suggesting to this amendment try to place culpability on people who knowingly import illegal lumber. When you talk about foreign laws, we are all united against illegal logging, and we would like to give you the tools to use to combat that, but in doing so the burden on business should not be for any foreign law.

If that is the intent, you know, specifics in the law I think are very important, and I think the burden of proof should be high on a criminal case, and I think the Justice Department would agree. When we ask for innocent owner we are merely looking for culpability to be placed upon people who knowingly do so, and for the responsibility for illegal acts to be placed upon people who are committing those illegal acts.

Providing an innocent owner provision similar to one that is in CAFRA allows businesses whose business is lumber to not be subject to foreign laws that they would have no way of knowing about. I think it is important to understand that there is a long supply chain in the harvesting of lumber, and I think with a documentation requirement in place that it is very difficult to audit that trail that we expect foreign sovereign governments to audit.

Ms. BORDALLO. Thank you. Thank you very much, Mr. Forester.

Mr. FORESTER. Thank you.

Ms. BORDALLO. Ms. Wrobleski or Mr. Barringer, would you care to comment on that?

Mr. BARRINGER. As far as the regulation is concerned we can appreciate that. I have heard the same thing for years in West Virginia about the regulation on logging. We have a book this thick in West Virginia of requirements that are placed on us just to log in West Virginia, but we do it, and we get by with it and it is OK. This is a dire situation.

We are talking about 69,000 workers to date that have lost their job because the furniture plants are leaving this country to chase cheap wood, going after illegally logged timber. Something has got to be done.

Congressman Brown, in your state in South Carolina they estimate there were probably 300 small hardwood saw mills. Unless something is done, those guys, half of them are toast in 10 years. If there is 300 sawmills that is 29,000 paychecks in the State of South Carolina. We don't know for sure. That is an estimate of the number of small sawmills in the state.

Ms. BORDALLO. All right. Would you care to make a statement?

Ms. WROBLESKI. I think the point that I would make, Madam Chairman, is that the legislation is fairly specific about what foreign laws we are talking about, and I think that has been the critical issue frankly for AF&PA throughout this process is the requirement for specificity.

Illegal logging is defined as organized efforts to steal trees or otherwise ignore a country's efforts to control and preserve its nation's forests such as harvesting without authority in designated national parks or preserves, logging in excess of authorized amounts, failing to pay taxes or royalties on harvested logs and exporting logs in violation of export limitations.

I think the point that the legislation is directed with this specificity at those particular laws is frankly something that AF&PA applauds.

Ms. BORDALLO. Thank you very much, Ms. Wrobleski. Now, the Chair recognizes the Ranking Member, The Honorable Mr. Brown from South Carolina.

Mr. BROWN. Thank you, Madam Chairman, and thank you all. What an interesting panel. I hope we can come to some good resolve. It concerns me. Certainly, we don't want any illegal products coming into this country, whether it is fish, or wood, or whatever else it might be, but to place the burden of responsibility on the end user to determine whether it is legal or not legal I think is a difficult task for me.

With that, let me ask this question to Ms. Sobeck. Ms. Sobeck, H.R. 1497 requires that U.S. users of imported wood products comply with all foreign laws, treaties and international agreements. How many forest laws are there in Indonesia?

Ms. SOBECK. I don't know, sir.

Mr. BROWN. My notes say 900.

Mr. BLUMENAUER. Madam Chair, just in aid of, that was the bill as it was originally introduced. As I tried to make clear in my testimony, we have been working with many of the people here. The version that is introduced by Senator Wyden reflects the consensus

that we have developed. My testimony was based on using that amended version.

Mr. BROWN. OK.

Mr. BLUMENAUER. I don't want us to spend a lot of time on something that isn't what I am proposing.

Mr. BROWN. OK, but that was just to get me where I want to go next, but thanks, Earl. OK. How do we determine whether the product that we are receiving at the port whether it is legal or illegal? How do we make that determination, and who makes the determination?

Ms. SOBECK. Well, that determination is going to depend on a case by case basis. If we, the United States, are going to be making a determination that somebody has broken the law the burden is going to be on us to show that the person or entity knew or should have known in the exercise of due care in order to bring a criminal violation.

Mr. BROWN. And that is my point is that, you know, looked like to me the United States government ought to be responsible for determining what products are legal and what is illegal. I know that those countries have to comply with their own laws to I guess credit whether it is legal or not legal.

I would hope that some time or another we could have that in a manifest that when the product comes in that we could make that determination and not wait until it becomes a chair or whether it becomes some other piece of furniture. That is too far down the supply chain I think to bring some criminal activity.

I mean, I would hate to see somebody come in to one of those plants and confiscate some boats, or, you know, some furniture because somebody missed that checkpoint when it came into the United States.

Earl, that is my real concern is we can get some clarification at that level. We don't want it coming in. We don't want those mills to close down, we don't want all those furniture plants to close either that buy that lumber from those hardwood mills, but how do we know when we import something from China whether it is coming from lumber that is legal or illegal?

Ms. SOBECK. Well, Congressman, I think that it is going to partly be the paperwork that is going to be required to accompany the products upon their import, and then it will be up to the exercise of due care to importers or others farther down the line. If there is somebody farther down the consumer line who has no knowledge, the government would not be bringing any kind of criminal action under this set of amendments to the Lacey Act if they were enacted.

Mr. BROWN. Then you would support innocent owner provision?

Ms. SOBECK. Well, with respect to the criminal offenses obviously somebody who had absolutely no knowledge and no duty to know in the exercise of due care to know that the product was illegal would not be subject to criminal sanctions. The forfeiture provisions are not subject to those knowledge requirements under the Lacey Act at the moment with respect to the contraband substance itself.

Mr. BROWN. OK. Could I get a comment from the rest of the panel on the innocent owner provision?

Mr. VON BISMARCK. Thank you, Congressman. I think it is helpful to distinguish that for prosecution of individuals it is our understanding that the burden is on the government to prove intent, so there under this law will be no prosecution of individuals that did not know or did not follow due care.

The discussion over innocent owner relates to seizure and forfeiture only, and in that case from our point of view from working on enforcement and looking at what deterrents would work would be very important to consider that the comment made by Mr. Barringer as to the impacts on the economy are largely driven by the actual shipments of illegal timber making it into the country.

The problem with the innocent owner and why we say it will gut the bill is that if we have the information, if we can prove that a shipment is illegal, we should be allowed to seize it. That would be so important for the signals that this will send in the market.

Mr. BROWN. Right, and I agree we ought to be able to seize it, but we ought to be able to seize the original shipment, not wait until it has been transformed into some other product. That is the reason I was thinking about the innocent provision in there. If it goes through Customs, you know, like the normal standard process and it is all agreed to then why would the next chain of ownership not be OK?

Mr. VON BISMARCK. It is actually a critical point, Congressman, and it is very important to not look at only one point in the supply chain. It is certainly true that the supply chain gets very complex in the case of wood products, and I think that will lead to the fact that it will be more difficult for the government to prove that something is illegal if it is highly manufactured, and therefore, somebody dealing in those kinds of products is less likely to be prosecuted.

If it can be proven it is essential that case can be brought. Otherwise, if we only look at sawn timber or we only look at logs the market will simply respond by manufacturing the products in a country that does not have similar laws and then shipping all of the illegal material in the form of chairs into the United States.

Mr. BROWN. So you think the proof of legality ought to be with the receiver or with the government who is actually doing the inspection as it comes through? I mean, wherever that end product comes, how can they be responsible for an act that took place in Indonesia?

Mr. VON BISMARCK. Well, they won't be responsible, but the good can be seized if the government can bring evidence that material is illegal.

Mr. BROWN. But shouldn't that be done at a port of entry?

Mr. VON BISMARCK. If it can it certainly should be. That would be most efficient, and that is what the on the ground work that the U.S. Government is doing now would effectively do, but it needs to be buttressed by this legislation that says if something gets through you are not going to be able to sell it in the United States and therefore have the motivation to try to avoid the efforts in Indonesia to solve the problem there.

Mr. BROWN. Ms. Sobeck, do you agree with that assumption?

Ms. SOBECK. I am sorry. I agree with you, Congressman, that we should try to get at a violation at the earliest possible time. In fact,

our preferred enforcement mechanism would be to have the foreign country and the country of origin do their policing of their own laws to prevent the export of the material to the United States.

Mr. BROWN. Sure. Sure. Right.

Ms. SOBECK. Then of course we would like to catch it at the border and have the primary importer. I think that is always our preferred enforcement mode for Lacey Act prosecutions even if the predicate offense is a state law. We are always going to go after the main importer, the main supplier, the wholesaler, but as Mr. von Bismarck noted, sometimes you don't get there.

Sometimes the only thing you have is the illegal product itself. I agree that if since what we are trying to do is get to not having us be the consumer nation of this illegal product, then having an action not against the individual, not a criminal action, not something that is going to jeopardize their liberty or result in a criminal fine but to forfeit the product itself even in the absence of knowledge of the owner further down the supply chain or ownership chain, that occasionally may have to occur.

Again, that is the structure that is already in place in the Lacey Act. We have limited enforcement resources. We are going to try to target them in an intelligent, appropriate way.

Mr. BROWN. Mr. Forester, did you want to respond?

Mr. FORESTER. Thank you very much. Innocent owner does not prevent the government from seizing goods. In fact, CAFRA, the Civil Forfeiture Act, has an innocent owner provision. We were looking for Lacey to include the innocent owner similar to what CAFRA does. Listen, people import illegal lumber knowingly. Criminals should be prosecuted.

You should prosecute them, and I want you to prosecute them. That makes better business for the rest of us who are doing it legally. There is no doubt about that. CAFRA, which is a forfeiture act, has an innocent owner provision in it. We are looking for Lacey to incorporate an innocent owner provision to protect people who do not knowingly import illegal timber.

It is to put culpability on people who knowingly are doing criminal activities from a criminal set. It doesn't affect forfeiture, and illegal timber should be seized. If the government can prove that it is illegal timber they should absolutely seize it.

But from an importer's standpoint, if you have to prove legality currently through import documents, export documents from the country of export, import documents, I do my due diligence with my suppliers to make sure that they are providing me with legal documents, I expect foreign sovereign governments to do their due diligence in enforcing their laws because I cannot substitute for the U.S. Government or more importantly a foreign sovereign government to audit the trail of legal documents through the long supply chain that happens.

Lumber is cut, it is sawn, logs travel, people sort their logs, and this happens in the United States also, and I think it is done legally. It is a long supply chain. If I have legal documents from a foreign sovereign country I need to rely on that because as a small business I don't have the resources that the U.S. Government nor foreign governments have to police the activities and the laws in each individual country that I am dealing with.

I think if you have a criminal and that criminal is importing lumber, prosecute them. Wonderful. That is the best thing that we could have.

Ms. BORDALLO. Thank you very much, Mr. Forester. We are going to have a second round of questions here, so I would like to tell the Ranking Member he has a second round here. At this time I would like to recognize the author of the legislation, Mr. Blumenauer of Oregon.

Mr. BLUMENAUER. Thank you very much, Madam Chair. I really appreciate the line of inquiry that we had a moment ago because I think it is starting to get to the focus of what we are trying to do here.

Mr. Forester, in your introduction, it is not in your written testimony, but in your introduction, you elaborated that you visited overseas. You went over and looked at what is going on, on the ground, repeatedly to assure?

Mr. FORESTER. Yes.

Mr. BLUMENAUER. Now, why do you do that instead of just relying on what the Chinese, or the Indonesian, or the Thai tell you?

Mr. FORESTER. Or the Central and South American locations that I go to.

Mr. BLUMENAUER. Right. Why do you do that?

Mr. FORESTER. We do business domestically and internationally, and I choose suppliers the same way internationally as I would domestically. You need to meet your supplier, you need to visit their location, you need to walk in and look at their yard. You need to look around. Do they have a neat yard or is there things piled up everywhere?

You need to meet the people that you are dealing with and get a feeling about them. Then you need to work through documents and whatever else to determine whether they are doing something——

Mr. BLUMENAUER. Right, but you just don't rely on representation from foreign brokers or for foreign governments. You do it yourself on the ground.

Mr. FORESTER. As a small business we do directly import out of certain Central and South American countries. I do not do any business in Asia, so I cannot speak to Asia. We do buy from U.S. companies and brokers that have brought product through Customs, and many of the IWPA members do that, and I think they are relying and I rely on the documentation.

Mr. BLUMENAUER. I guess the point I am trying to make is that you go to extraordinary lengths to guarantee that those areas that you are involved with meet your standards.

Mr. FORESTER. To the best extent possible.

Mr. BLUMENAUER. Yes, and I guess this to me is an illustration, Madam Chair, of why I think we need this legislation, because somebody who chooses not to go to that length, who just gets a good price, wants to take it, looks the other way, is on the same footing. We wouldn't have an illegal logging business thriving worldwide if we had higher standards in the United States.

Your mills wouldn't be at risk, or at least as many of them, in South Carolina if everybody did what Mr. Forester does. The notion that people just kind of can sort of take what is thrown over the

transom. It is common knowledge to people in the industry that these are illegally harvested lumber, that they are not all done according to the standards that are in place technically but not enforced.

Mr. BROWN. Would the gentleman yield real quick?

Mr. BLUMENAUER. Surely.

Mr. BROWN. Earl, I know that he goes and looks at the yard, and it looks clean and all that stuff, but legally who has the stamp to say whether that is legal timber harvesting or illegal timber harvesting? Looked like to me if the country would give some kind of a stamp to say that this mill is shipping, or that is a legitimate mill, or nonlegitimate mill, the country of origin should have some legal responsibility to certify it.

I would think the United States, as we ship products abroad we have some certification to say that, you know, these are legal timber products or whatever.

Mr. BLUMENAUER. I agree, and I think as you go overseas and you look at what is happening. For example, there has been a big brouhaha about sweat shop provisions, and you understand that again in South Carolina, and what has happened is that the industry has created protocols. They have standards for what they purchase. Whether it is Adidas or Nike, they have protocols. They have things that their mill, the people they supply from, their suppliers, that they look for, that they agree to a code of conduct.

Occasionally mistakes will be made, but if a company has in place procedures, if these are in fact represented to them, and they follow through in a reasonable fashion, and they make reasonable effort and they have standards, as I read the bill as we have attempted to understand it, that there would be no criminal penalty unless—and the Department of Justice has more than what they can do, and I appreciate Ms. Sobeck being here, but correct me if I am wrong—the criminal liability would not kick in unless you could prove that they knowingly accepted illegal.

The civil penalties are, people, they either need to know or should have known that due care exercised before they are even subjected to civil penalty. Under this legislation there would be an additional disincentive, which is an illegal log or illegal piece of furniture if it is found out would be forfeited so that there is an incentive up and down the chain to do what responsible manufacturers are already doing, what Mr. Forester is already doing. Isn't that correct? Do I have that right?

Ms. SOBECK. That is correct with respect to criminal culpability. There is no innocent owner without any knowledge, or a responsibility, a duty to exercise due care, no innocent owner will be found guilty of a criminal offense. They will be subject to forfeiture of the product. There has been a little discussion of CAFRA, and I did want to note that the case that you have been mentioning, the crab case, actually found that the Lacey Act forfeiture provisions were consistent, were OK under that statute, and so they are not inconsistent.

So to the extent that CAFRA has an innocent owner provision that is supposed to apply across the board to civil forfeiture statutes Lacey has been found by at least one Court of Appeals to be consistent with that standard.

Mr. FORESTER. And that is wonderful. That is why I am here today. I try to do and do the best job possible, but that said, if Lacey is not tied to the innocent owner provisions in CAFRA, if there is not a specific tie to it, all the good things that I try to do to import legal lumber, which I do—I am here not to defend illegal lumber——

Mr. BLUMENAUER. I am asking the questions. Excuse me, Mr. Forester.

Mr. FORESTER. OK. Yes, sir.

Mr. BLUMENAUER. I mean, you are debating the Lacey Act. You are not debating what we are proposing here. If people want to come back and change the Lacey Act to clarify that there is an innocent owner provision, so be it. What we have here in this legislation is simply extending it to the Lacey Act.

If your segment of the industry wants to take exception to the Lacey Act, go do that. What we are doing is trying to, and I really appreciate the broad industry support, the broad labor and environmental support, to try and root out of the chain of commerce illegally logged timber which is occurring now, which is widespread, which is why, Mr. Forester, I hope that you are looking on the ground in Latin America to make sure because you are representing to your customers that they can count on what is going on.

What the other and I appreciate the majority of the people in the industry are here arguing is that everybody ought to be able to rely on that under the force of law. The Lacey Act is the simplest, most direct way I think to accomplish that. If people want to change the Lacey Act, that is a separate issue. We are just proposing that the Lacey Act protection apply to illegally harvested timber. Thank you, Madam Chair.

Ms. BORDALLO. Thank you very much. I have a couple of questions on the second round for Ms. Wrobleski and Mr. Barringer. Both of you, the two of you, you know it is very unusual for the Congress to be asked by U.S. businesses for any expansion of U.S. laws or regulations which may affect their particular business. Are you not concerned that your own companies may be inadvertently caught up in the Lacey Act and forced to prove your own innocence?

I will ask you, Ms. Wrobleski, first to answer that.

Ms. WROBLESKI. Thank you, Madam Chairman. I think that over the course of the last several months of negotiations between the many stakeholders who care deeply about the issue of illegal logging, the members of AF&PA and certainly International Paper have come to the realization and the understanding that the current proposal which Mr. Blumenauer has proposed is one that we think is the most effective.

At International Paper we have complete confidence in our supply chain. We pay great attention to CITES. We don't log anyplace where Conservation international has declared a hot spot, we are very careful about tropical forests. I mean, we have a long legacy of good stewardship of the forests, and we protect that legacy and frankly it is an important part of who we are as a company.

As I say, I think that on behalf of the association and the industry the proposal that we have before us we think is workable and will be effective.

Ms. BORDALLO. Mr. Barringer?

Mr. BARRINGER. Yes. No, I am not concerned. From Coastal Lumber Company's standpoint we just do the right thing. Just from that standpoint, that doesn't concern me. I have been to hundreds of furniture plants in China, and Vietnam, and Southeast Asia and so forth, and they all know it is illegally logged. They laugh about it. They all know that the wood that is sitting in that furniture plant that is going to the United States has been illegally logged along the Russian border, and they have paid bribes to get it.

Now, I am not saying that everybody is, you know, perfect on this, but something has got to be done. Something has got to be done now. Like I have pointed out, in Congressman Brown's state you have a lot of jobs at stake right now. You can talk to Sumter Furniture in South Carolina where my grandfather worked as a forester 75, 50 years ago. Well, they are in China now. They are in China.

Ms. BORDALLO. Well, I have been a member of the Small Business Committee here in the U.S. Congress, and I know the tales of the small businesses. It is really very sad.

I have a question for you, Mr. von Bismarck. Some have questioned whether international trade and U.S. demand is really a driver of illegal logging in foreign countries arguing that most illegal wood is sold domestically. Given your experience on the ground in these countries, how do you respond to that assessment?

Mr. VON BISMARCK. Thank you. Yes. The current estimates are that the illegal portion of international trade is about 10 percent, and the estimates that we have pulled together in the report that we prepared for this hearing we also found that best estimates are that about 10 percent of imports into the United States are from high risk material which would go to about 3.8 billion a year.

Those are obviously difficult statistics to pull together. We are talking about smuggling. They are difficult in any smuggling to pull together exact statistics. They also in a way miss the point of what we are trying to do here.

What we are absolutely certain about is that from the point of view of uncontacted, indigenous peoples in Peru, or from the point of view of the last national parks available remaining in the world, and from the point of view of those impacted by illegal imports, it doesn't matter what the proportion is relative to legal forests, it matters how it is impacting things on the ground.

So even a small proportion coming into the United States can have an enormous impact on a national park that is being entered by a criminal elements in Honduras, for example. I think in terms of the driver it is clear that often illegal logging is a first step that begins a chain of events that includes the other complex issues as have been rightfully point out that determine deforestation.

Often, illegal logging is one of the first gateway activities that occurs in those stories.

Ms. BORDALLO. I have a further question for you. The IWPA argues that the best way to combat illegal logging is to enforce the

laws that are in place in foreign countries. What is your response to that?

Mr. VON BISMARCK. It is absolutely correct that enforcing foreign laws and working on the ground in foreign countries is extremely important. What is just missing from the comment is that it is currently being undermined by the fact that we are in essence unwittingly financing the criminals that we are spending money overseas to combat, and it just doesn't make sense.

I think that every approach that we have had to try to deal with an illegal trade problem understands that there is a demand and a supply side to the problem, and it requires a comprehensive approach. This demand side has been missing.

So specifically, the Lacey Act in its inception 100 years ago interestingly was created to support laws in other states, so it is precisely for that objective that is pointed out, that we need to support the efforts in foreign countries to enforce their own laws. That is precisely the objective of this legislation.

Ms. BORDALLO. Thank you very much. Now, the Chair recognizes for a second round Mr. Brown, our Ranking Member.

Mr. BROWN. Thank you, Madam Chair. With that in mind, how can we as an end user of a produce enforce the laws in another country?

Mr. VON BISMARCK. This legislation is not requiring any business to enforce laws in another country.

Mr. BROWN. But to comply with them, right?

Mr. VON BISMARCK. Right, and I think enforcement officials here will point out that in any prosecution to date in the Lacey Act much of the success of that prosecution depends on communication with the source country and support from the source country in clarifying those issues. I think your point, Congressman, of clarification of laws is a very important one, and again, is the kind of measure that this legislation will instigate and support.

There are efforts in Indonesia as we speak, very successful ones, to condense the 900 laws to a much more compact collection of laws that the Indonesian government considers as illegal timber. That was precisely driven by initiatives in the consuming markets to ask Indonesia, we need clarification.

This legislation would have the effect of allowing the U.S. market to make that same request and result in clearer laws overseas.

Mr. BROWN. But don't you agree, and Ms. Sobeck, I guess you can chime in on this, that part of the responsibility of the United States government is to protect the interests of our small businesses to be absolutely sure that they aren't being victimized by some criminal element in some foreign country?

Mr. VON BISMARCK. Absolutely, Congressman. I think it is understandable that with these kind of measures there is trepidation on the part of small business. I certainly cannot speak for small businesses, but I would say that it is certainly our take that this legislation would be an enormous boon for businesses such as Mr. Forester's in the United States who are taking those measures as were described today.

Mr. BROWN. I don't think Mr. Forester is taking any level of precaution that other manufacturers aren't unless there is some illegal intent within some of the other, you know, manufacturers in the

United States. I don't think he is going over there looking and see if they are legal. I don't know how you can determine that.

As far as when you go to these other countries, how can you tell whether the product is legal or illegal?

Mr. FORESTER. When we go to foreign countries we do as much investigation as we can, but ultimately, we are still relying on the National Forest Service of these foreign countries and the national governments of these foreign countries to ultimately certify that this lumber is legal. I think I misspoke. If I did, I am sorry.

I am not looking to amend the Lacey Act or make any changes to it. This amendment to the Lacey Act is addressing an industry with a very long supply chain, and it is different from the supply chains that the Lacey Act currently covers. I think when you make such an amendment it is necessary to understand that long supply chain and the fact that there are many people along that supply chain that are responsible for the lumber as it moves through the supply chain.

Somewhere along the line as a business owner I have to rely on somebody to say that this is legal. I can do lots of things. I can have documents issued by foreign countries, I can have CITES documentation, I can have other third-party certifiers certify lumber, but ultimately, certification is a standard. Laws are a standard. It comes down to enforcement of those laws to ensure legality.

That is true in the United States. When I do business with other companies in the United States and they ship me product I expect that to be legal. I rely on them to provide me with legal documentation, and I rely on the United States government to address any illegality that may happen further down the chain. I expect foreign governments to do the same.

I think the United States government, along with USAID and many other free trade agreements that they have, need to help foreign governments enforce their laws because ultimately that is the only true barometer of legality. Because how do I prove legality? I mean, how far back should a business go in proving legality?

I cannot audit the entire supply chain, and I cannot audit the entire documentation. Criminal behavior is criminal behavior. All I can do is work with the best of my knowledge, and work with the export documents from foreign countries and expect the government to do their due diligence.

Mr. BROWN. Have you ever been subject to illegal products coming in to your operation?

Mr. FORESTER. No.

Mr. BROWN. When you make an order, do you pay in advance? When does the money transfer?

Mr. FORESTER. Well, it depends. There are times when we pay when lumber hits the docks or at times when we have paid when lumber is at a port in a foreign country. In some Central American countries we have gone so far as to advance money to developing businesses down there to develop—it is within a certification system that we are very happy with, but we have advanced money before trees have even been cut in an attempt to help develop that thing.

Frankly, we were doing something in parallel with basically what USAID was doing in the country. As a private business we were doing a very similar action. So it runs along the gamut.

Mr. BROWN. Ms. Sobeck, are you familiar with some cases where there has been illegal lumber, illegal logs coming into the United States? Have you had any personal cases that you have had to deal with?

Ms. SOBECK. Not that I personally have dealt with. I believe there has been one case involving CITES listed timber, but that would not have been a Lacey Act case, and other illegal logs in the sense that they were harvested illegally in a foreign country. Other than CITES species that would not come to the Justice Department's attention because it would not be a crime under U.S. law.

Could I just make a couple of points? I want to make clear that in a criminal case the burden is never on the defendant to prove that imported product was legal. The burden is always on the government to prove that it is illegal. Much of the discussion today from various industry representatives about what they do in terms of looking at the certification or making site visits and understanding the supply chain would qualify as due diligence and that we wouldn't expect them to go beyond that kind of behavior.

I am not talking in any specific case, but we would not prosecute somebody criminally if they had exercised due care. A lot of what we have been hearing is the kind of due care that would benefit small business. What we don't want is when a small business owner knows that the certification from a foreign country is false.

We have heard some discussion of it is well-known that there is timber that is illegally logged elsewhere and that perhaps because of corrupt practices in foreign governments there is a patently illegal or invalid certification. The burden would be on the government, but if the government could prove that an individual knew that the product was illegally logged then we would initiate a criminal case.

Mr. BROWN. Do you know how many cases we have made this year? Didn't you say it is like a billion dollars that is coming in illegal?

Ms. SOBECK. We aren't making any cases except in CITES listed timber because it is not currently illegal. So in terms of how much product is coming in that was taken illegally abroad, the Justice Department, we do not deal with that. My colleagues here on the panel have some information statistics, but none of that timber is illegal under United States law at the moment unless it is listed on CITES.

Just one more thing. I just wanted to let you know that the United States, we are training prosecutors abroad and working with foreign enforcement officials. That is one of the principal things we are doing under the MOU with Indonesia because we do want primary enforcement to be in the country of origin.

Mr. BROWN. Sure. Sure.

Ms. SOBECK. We don't want this to be a United States problem.

Mr. BROWN. Well, when do you think we would be able to get some kind of a certification that when that manifest comes into the port, if it has a proper certification on it, it is OK? You think we will ever get that standard?

Ms. SOBECK. It is always going to be relevant to the Justice Department in assessing a case what the certification says, and depending on whether or not that is adequate is going to depend on the circumstances.

Ms. BORDALLO. I think, Ms. Wrobleski, you wanted to comment, right, or Mr. Barringer? Yes?

Mr. BARRINGER. To answer that question, just in regards to the furniture industry segment the market will take care of a lot of that. Let us just say you are importing illegal log wood product. You go to the plant in China and you say, you know what, guys, you have to make that furniture with legally logged sustainable timber. OK, fine. They start buying it from the United States or they start buying it from some FSC certified wood somewhere else.

That will take care of a lot of it. The price isn't that much different. Again, like I said in my earlier statement, the saw mills in the United States can be competitive with any plant in the world if we just have a level playing field. It is difficult for us to compete against illegally logged timber, but the market will take care of a lot of this by forcing it back on the Chinese furniture plant.

Ms. BORDALLO. Thank you very much. I have one wrap up question here for Mr. Forester. I have been listening, and do we understand you correctly? You are not opposed to amending the Lacey Act to preclude the import to allow the seizure of illegal timber at the point of entry? Is that correct?

Mr. FORESTER. Could you read that again? You are asking me a very specific question.

Ms. BORDALLO. You are not opposed to amending the Lacey Act to preclude the import and allow the seizure of illegal timber at the point of entry?

Mr. BROWN. Madam Chairman, that is the reason I asked him when did he pay.

Ms. BORDALLO. That is correct. Would you want me to read it again?

Mr. FORESTER. No, no, no, no. I understand. I think it is a little bit more than a yes or no question, but yes, if the government proves that someone brought illegal timber into the United States that timber should be seized. However, if the importer did not knowingly import that and is innocent, in this amendment because of the supply chain I think there should be protection for the innocent purchaser.

Ms. BORDALLO. Protection from what?

Mr. FORESTER. From criminal prosecution and civil prosecution for that timber coming in if they did not knowingly do that. That is my issue with this bill is that as a legal importer and doing the right things, if someone further down the supply chain does something illegal, yes, that timber is illegal, yes, I don't have a problem with that being seized, but I don't want to be criminally or civilly liable as a business——

Ms. BORDALLO. I am just rather concerned because wouldn't everybody say they are innocent?

Mr. FORESTER. And I think it is the government has the resources to prove that I knowingly imported it? I think that is something the government should do. Absolutely. I find it difficult with

legal documents to determine how I would prove my innocence, but I think I can defend my innocence.

Ms. BORDALLO. Would anyone else like to comment on that? Yes. Please go ahead.

Ms. WROBLESKI. Thank you, Madam Chairman. I don't want to pretend that International Paper is a small business, but I did want to pick up on something that Mr. Barringer said and that is the pressure of the marketplace. It is not just the pressure of suppliers and our supply chain, but frankly it is the pressure of our customers.

Our customers want to know that what they are buying has been sustainably produced and is legal. To the extent that we can work with Congress, and the government and the environmental community to get some legislation on the books that helps us reassure our customers, and again, Mr. Barringer's point that the market will take us further than that, and so I just wanted to say that I think that what we have here is a good compromise.

Everybody has given up a little bit. Nobody is, you know, perfectly 100 percent. Everybody has given some. I think that the legislation that we have is legislation that needs to go forward. Thank you.

Ms. BORDALLO. I thank you all. I thank all of the witnesses for their testimony and their informative answers. Members of the Subcommittee may have some additional questions for the witnesses, and we will ask you to respond to these in writing.

Yes. Go ahead.

Mr. BROWN. Madam Chair, I hate to interrupt you, but I have some letters that support, or do not support this bill, I guess. For the record if I could submit them?

Ms. BORDALLO. No objection. So ordered. The hearing record will be open, I would like to remind the witnesses, for 10 days for these responses, so if you are questioned you have a 10-day period to answer. If there is no further business before the Subcommittee the Chairwoman again thanks the members of the Subcommittee and our witnesses. The Subcommittee now stands adjourned.

[Whereupon, at 11:43 a.m. the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record by Patrick Alley, Director, Global Witness, follows:]

Statement submitted for the record by Patrick Alley, Director, Global Witness

Chairwoman Bordallo and members of the Subcommittee, thank you for the opportunity to share our experience of illegal logging[i] in Cambodia and its impact on the country and its people.

Global Witness[ii] first began exposing illegal logging in Cambodia and its links with conflict, corruption and human rights abuses in 1995. Over the past 12 years

[i] Throughout this document, illegally logged timber is defined as any timber which is in violation of provisions of Cambodian law and regulations relating to the acquisition of exploitation rights, logging, means of harvesting, sale, purchase, transportation, import or export of timber.

[ii] Global Witness is an advocacy organisation which exposes the corrupt exploitation of natural resources in order to drive campaigns that end impunity, resource-linked conflict, and human rights and environmental abuses. In 2003, it was co-nominated for the Nobel Peace Prize for its leading work on "conflict diamonds'.

we have documented numerous cases of illegal logging across the country, and the resulting social, economic and environmental consequences.

In the time that we have been working on this issue the modus operandi employed by illegal loggers has changed but the power relationships underlying the crime remain the same. Today, as it was twelve years ago, the individuals behind the major illegal logging operations in Cambodia are those with business or familial links to powerful political figures. In other words, the bulk of illegal logging in Cambodia is not carried out by poor people in desperate search of supplementary income. It is an organised criminal activity which enables politically well-connected individuals to generate large amounts of money at the expense of the rural poor. They are assisted in doing so by those elements of the state nominally responsible for protecting the forests and upholding the rule of law: politicians, police and military included.

Whilst our long involvement in Cambodia has given us a detailed insight and knowledge of the country's illegal logging industry, the patterns of abuse observed there are not unique. In many countries where Global Witness works, government and state agents are predatory and civil society is correspondingly weak. In such states, forest resources are particularly vulnerable and illegal logging can become embedded and thrive. This in turn contributes to patterns of exploitation that are inequitable and geared more towards the profits of individual officials and companies rather than poverty reduction and environmental conservation.

Global Witness views the Legal Timber Protection Act's proposed amendment to the Lacey Act as an important first step towards combating these practices. Taken on its own, the proposed legislation will not completely shut down demand for all illegal timber. However, its effect would certainly be felt by those carrying out the logging by decreasing demand for their product and, ultimately, reducing their profits. Perhaps more importantly though, the proposed changes to the Lacey Act would set a precedent for other countries to follow, and thus help fill the current legal vacuum which provides illegal loggers and their political allies with unfettered access to global markets.

The Loss of Cambodia's "Most Developmentally Important Natural Resource"

Illegal logging and human rights abuse have a long history of association in Cambodia. Global Witness' early work revealed how, in the last years of Cambodia's civil war, both the Khmer Rouge and the Phnom Penh government used logging to fund military campaigns which resulted in massive loss of life and livelihoods. Our investigations revealed a cross-border timber trade with Thailand worth US$10-20 million per month. Following our exposé, the Thai border was closed to Cambodian timber—cutting off a critical source of military funding for the civil war. This did not spell the end for the illegal logging of Cambodia's forests, however.

Since the war ended in 1998 Cambodia's leaders have found it hard to kick the habit of treating the country's forests as a personal slush fund for political campaigns, personal enrichment and rewarding key clients. The cumulative impact of this epic mismanagement is that the country's forests—termed by the World Bank as Cambodia's "most developmentally important natural resource"[1]—have contributed very little towards the post-conflict economy.[2] Instead, funds which should have gone towards the development of this damaged state have been siphoned off via illegal or exploitative logging practices into the bank accounts of the political elite and their cronies.

The Role of the Concessionaires

In the mid-1990s, senior government ministers secretly awarded between 30 and 40 logging concessions to Cambodian and foreign-owned companies. The contracts signed away over seven million hectares of forest, i.e. 39% of Cambodia's land area, on terms that greatly favoured the interests of the concessionaires over those of Cambodia.[3] All the concessionaires proceeded to break the law or the terms of their contracts or both in order to reap a fast profit (see appendix 1 for further details). Throughout the late 1990s and up until 2002, they were responsible for most of the illegal logging in Cambodia.

During this time, employees of the concessionaires violated the rights of people living inside or adjacent to forest concessions on any number of occasions. Abuses committed by company staff included denial of access to forest areas, intimidation, rape and, in at least one case, murder.[4]

The environmental impacts of widespread illegal logging were felt both locally and nationally. At a local level, these typically included obstruction of streams that form people's water supply as a result of poor road and bridge construction. At a national level, the overall impacts of the concessionaires' logging were also apparent. Agri-

culture and fisheries are the Cambodian population's main sources of food. Both are sustained through natural systems of water management within which the forests play an important role. UN agencies cited deforestation as a cause of the severe floods in 2000 that cost Cambodia an estimated US$156 million.[5]

International donor and NGO pressure did eventually lead the Cambodian government to suspend the concessionaires' logging operations in early 2002. This was followed by a period of donor-government consultations, culminating in a "road map" for forest sector reform.[6] However, despite public commitments to these reform processes, Cambodia's shadow state has continued to illegally generate money from the timber sector. The same officials charged with implementing reforms have actively subverted them, with the result that illegal logging has continued in a variety of forms and is causing severe damage to Cambodia's remaining forests. The last global forest cover survey by the Food and Agriculture Organization (FAO) found that Cambodia had lost 29% of its primary tropical forest over a five year period.[7]

The New Face of Illegal Logging in Cambodia

In June of this year, Global Witness published its latest report on illegal logging in Cambodia which exposed some of the scams used by illegal loggers in recent times. The report, "Cambodia's Family Trees", is the result of several years research and details the activities of a group of timber barons who together constitute Cambodia's most powerful logging syndicate. With familial links to some of the country's key political figures, their careers illustrate how the country's political elite has successfully subverted forest management reforms and continued looting a valuable public asset.

The individuals behind the Seng Keang Company logging syndicate featured in our report, although undoubtedly major players in the illegal logging industry, are not the only timber barons in Cambodia. However, their activities and the way in which the group has conducted its business are illustrative of the deleterious impact of illegal logging across Cambodia as a whole. Global Witness investigations into the group's activities over a number of years have charted just how damaging their "business" has been to local communities, the environment, rule of law and the national economy.Their behaviour has encompassed not only illegal logging but also acts more normally associated with a Mafiosi organized-crime mob, including extortion, bribery, kidnapping, forced imprisonment and attempted murder. The findings of our investigations are summarized below. Further detail and references for the points covered in this document can be found in the main body of "Cambodia's Family Trees".[iii]

Introducing the Seng Keang Company: Cambodia's Premiere Logging Syndicate

The syndicate is led by Dy Chouch, also known as Hun Chouch, his ex-wife Seng Keang, and their business partner Khun Thong. Seng Kok Heang, the brother of Seng Keang, also works for the syndicate. Dy Chouch is the first cousin of Prime Minister Hun Sen. Seng Keang is a friend of the Prime Minister's wife, Bun Rany. Khun Thong is the brother-in-law of Minister for Agriculture, Forestry and Fisheries, Chan Sarun, and father-in-law of the Director General of the Forest Administration, Ty Sokhun. While this syndicate has operated under various different labels over the years, most recently it has been known as the "Seng Keang Import Export Company Ltd."

Members of the Seng Keang Company[iv] first came to Global Witness' attention as logging subcontractors for some of the leading concessionaire companies operating in Cambodia in the 1990s. One of their key customers was a logging concessionaire company called Kingwood Industry.

Despite generating large profits from illegally logging within and outside its concession area, Kingwood underwrote its activities by borrowing money from a number of banks and individuals—including from Seng Keang. A source close to the company claimed that it needed to borrow because its directors were laundering sales revenue through affiliated companies in Indonesia, Singapore and Taiwan.[8] By late 2001, Kingwood owed Seng Keang US$1.9 million. The government suspension on concession logging in early 2002 effectively shut down Kingwood's operation and destroyed the company's chances of keeping up with debt repayments.

A source close to the Kingwood operation informed Global Witness that, in August 2002, Kingwood's Managing Director—a Taiwanese national named Lia Chhun Hua—attempted to cut his losses and leave Cambodia for good. According to this

[iii] The report can be downloaded from http://www.globalwitness.org/media_library_detail.php/546/en/cambodias_family_trees

[iv] For the purposes of this document, members of the Seng Keang Company are understood to be Dy Chouch, Seng Keang, Khun Thong and Seng Kok Heang.

source, he was prevented from doing so by Seng Keang, whose entourage abducted Lia, confiscated his passport and held him hostage in the factory. At this point, the Seng Keang syndicate took control of the Kingwood timber processing factory and all of its equipment. The last confirmed sighting of Lia Chhun Hua was in 2005. Global Witness does not know his current whereabouts.[9]

With the imposition of the logging moratorium in concession areas, the Seng Keang Company needed to look elsewhere to continue sourcing timber for processing at the Kingwood factory. An opportunity presented itself in the shape of the government-mandated rubber plantation in Tumring, Kompong Thom Province. The Tumring Rubber Plantation is situated in the heart of Prey Long Forest—mainland Southeast Asia's largest lowland evergreen forest and an important part of Cambodia's natural heritage.

In October 2002 Chan Sarun's Ministry of Agriculture, Forestry and Fisheries gave permission to the Seng Keang Company to collect wood within the rubber plantation's boundaries.[10] The syndicate soon proved itself uninhibited by the plantation's perimeters, and went on to illegally log in the surrounding Prey Long Forest. The trees felled in the forest were then laundered via the rubber plantation. This formula—officially-sanctioned clear-felling within a valuable forest—provided almost unlimited scope for laundering illegally-logged timber between 2002 and 2006.

Anatomy of an Illegal Logging Operation

Damage to the local economy

With the rubber plantation project enjoying political support from the highest level, the syndicate were able to log outside the plantation boundaries with impunity.

Employees concentrated on logging Dipterocarp trees as the most suitable throughput for the syndicate's processing plants. Unfortunately for those people living in and around Prey Long forest, liquid resin collected from the Dipterocarp tree is a key source of additional income.

In recognition of the centrality of resin trees to rural incomes, Cambodia's 2002 Forest Law made it illegal to cut "trees of species that people tap for resin". Between 2002 and 2006 the company's illegal targeting of resin trees seriously damaged the livelihoods of hundreds, if not thousands of families living in the area.

Interviews with loggers and visits to cutting sites in Prey Long suggest that resin-producing trees accounted for at least 50% of the wood processed in the Seng Keang Company factory in its local factory.[11] Resin tappers in Tum Ar village on the edge of the plantation told Global Witness in 2006 that in the past all of the 100 families living there had owned 200-300 resin trees each. In 2006, only 5-6 families had any trees left at all.[12] In Rumchek village in Sokchet Commune villagers reported losing 800 resin trees to representatives of the Seng Keang Company in mid-2005 alone.[13]

According to resin tappers, Seng Keang Company employees would sometimes pay them compensation for cutting their trees. The sums involved were derisory however—US$1.25-US$12.5 for a tree whose timber might sell for as much as US$1,000 in Phnom Penh.[14] These payments were made on a "take it or leave it" basis.

Intimidation and threats of violence against the local population

The syndicate was able to maintain their control over the local population through a combination of familial connections, bribery and threats of violence. Their representative in Tumring, Seng Kok Heang, used this technique to establish his own personal fiefdom in the area. A report on plantations published in November 2004 by the UN Office of the High Commissioner for Human Rights made a clear link between this intimidation and the presence in Tumring of Seng Kok Heang, alias Mr 95:

"A man who goes by the name of "Kae Pram" [meaning 95 in Khmer] (his radio call sign is 95) heads the security guards of Mieng Ly Heng Company, and has a particularly brutal reputation. He is the brother of Seng Keang, the director of Seng Keang Company, the main subcontractor of Mieng Ly Heng. In Roniem village, people reported that they have been frequently threatened with death for their attempts to block illegal logging and illegal transport."[15]

Persistent intimidation of this sort gave way to outright violence on 10 July 2005, when Seng Kok Heang is reported to have tried to kill two local men who had played a leading role in protecting villagers' resin trees.

In March 2006 Minister Chan Sarun issued a decree revoking his earlier authorisations for Seng Keang Company operations, and by September 2006 practically all traces of the Seng Keang Company operation were gone.[16] The precise rationale behind the decision to close the company's operations is unclear. However, it seems likely that the attempted shooting of two community forest activists in 2005, and the international attention this generated, played a role.

Loss to the National Economy

The loss of income and violence suffered by the local population at the hands of Seng Kok Heang and his cohorts stands in stark contrast to the profits reaped by the company during its reign in Tumring. Because of the illegal nature of Seng Keang Company's activities, there are no credible official statistics on the amount of timber the firm has cut in Prey Long. Nonetheless, from interviews and Global Witness observations, it is clear that the returns on its logging and timber processing operation have been considerable. Calculated at the 2006 Phnom Penh price for sawn grade II wood of US$235 per cubic metre, Global Witness estimates that the Seng Keang Company's minimum yearly output of processed timber from Tumring would be worth over US$13 million. [17]

According to Minister Chan Sarun, between the point at which it officially commenced operations in Tumring and the end of 2005, the Seng Keang Company paid just short of US$600,000. In a sense questions regarding the amount Seng Keang Company paid in taxes are academic, given that the vast numbers of trees it cut illegally should not have been felled in the first place. Nevertheless, it is indicative of the overall loss to Cambodia, if only in financial terms, when one considers that taxing the syndicate's 100,000 m^3 annual round log consumption at the royalty levels applied to grade II wood—US$54 per cubic metre—would have netted the treasury US$5.4 million per year.

Whilst Cambodian government timber export figures nosedived after the imposition of a logging moratorium, [18] international trade figures paint a rather different picture of the volume of the country's timber exports. [19] These figures show that, between 2003 and the end of 2006, China imported from Cambodia a total of 28,000 m^3 of plywood worth US$16 million. Both plywood and sawn timber exports from Cambodia are taxed at 10% of their value and the total loss to the Cambodian government on untaxed plywood shipments to China between 2003 and 2006 may have amounted to US$1.5 million. [20] Losses on un-registered sawn timber appear to be double that figure.21 Global Witness is unable to say with certainty what percentage of these exports involved the Seng Keang Company. However, as the only known industrial-scale producer of plywood and veneer active in Cambodia at the time, it is highly likely that the firm played a significant role in the multi-million dollar trade in plywood. As perhaps the largest sawmill operator in the country, there is a strong possibility that it accounted for a sizeable share of the sawn wood trade as well.

Impunity in Cambodia's Forest Sector

Legal Protection

The prevalence of widespread illegal logging in Cambodia stands in stark contrast to the legal protections offered to the country's forests and forest-dependent people. Over the past seven years, the Cambodian government has passed a plethora of different laws geared towards clarifying the ownership and governance of forested land. Legal provisions relating to Cambodia's forests include a Land Law, Forest Law and a Community Forestry Sub-Decree.

In spite of these laws, prosecutions for illegal logging in Cambodia are rare and convictions rarer. The impunity offered to the Seng Keang Company over the years offers an insight into how those with high-level political connections have been able to bypass the legal protections afforded to the country's forests and forest-dependent people, thus undermining the rule of law. Appendix 2 of this paper provides a table documenting issues that Cambodia's judicial authority should investigate relating to the activities of the Seng Keang Company.

So far, Global Witness' calls for a credible investigation into evidence of illegal logging presented in "Cambodia's Family Trees" appear to have been ignored. Instead, the Cambodian government has banned the report and confiscated copies, the Prime Minister's brother is reported to have issued a death threat against Global Witness staff entering Cambodia, [21] and the Cambodian Embassy in London issued a press release demanding a change in Global Witness' leadership and a call to the organisation's donors to cut funding. [22]

How U.S. Legislation to Amend the Lacey Act will Help to Combat Illegal Logging and Associated Human Rights Abuse in Cambodia

Despite the Cambodian government's reluctance to investigate the evidence of widespread and systemic illegal logging and high-level corruption presented in the Global Witness report, it seems other governments may be more willing to take action. Global Witness welcomes the leadership that has been demonstrated by the U.S. in this regard.

- The recently passed 2008 U.S. Senate Foreign Operations contains a provision that the Secretary of State shall send a list to the appropriate congressional

committees of Cambodian officials, and their immediate family members, who he has credible evidence to believe are involved in corruption relating to the extraction of natural resources. The following restrictions will then apply:
  - A ban on visas to enter the US.
  - A ban on ownership of property within the U.S. and confiscation of any existing property.
  - A ban on any U.S. citizen engaging in financial transactions to benefit the named officials.
- The proposed amendment to the Lacey Act to help combat illegal logging will help to take this message one step further in a move which would be felt not only by the corrupt officials who enable illegal logging in Cambodia, but also by the loggers themselves.

The Lacey Act currently regulates trade in fish, wildlife and a limited subset of plants by making it unlawful to import, export, transport or purchase any that are taken, possessed, transported or sold in violation of any U.S. State or, with respect to fish and wildlife only, any foreign law. The new Act would expand the Lacey Act so that violations of foreign law that apply to plants and plant products (and hence trees) fall within its domain.

If implemented effectively, the proposed amendments would help to address the problem of illegal logging in Cambodia in the following ways:

1. Cutting the Demand from Manufacturers: Addressing Regional Timber Flows

Cambodia's illegal loggers are driven by a strong economic incentive to export their products to overseas markets. Past Global Witness investigations have revealed that much of the logged Cambodian timber is illegally exported to China, Thailand or Vietnam. Statistics suggest that a large proportion of that timber is then processed and re-exported to other markets.[23] The U.S. has been the single largest importer of Chinese goods since 2000 and its share of total imports of wooden furniture, flooring and plywood reached 43 percent of Chinese exports in 2006.[24] It is also a major importer of timber products from Vietnam and Thailand. In 2006, the U.S. imported just short of US$881 million of timber products from Vietnam and US$514 million from Thailand.[25] It follows that some of the illegally-sourced timber flowing through China, Thailand and Vietnam could well end up on the U.S. market. By making it illegal to import or sell illegally logged timber, the legislation will increase pressure on Chinese, Thai and Vietnamese buyers to carefully source their products and to avoid the current practice of purchasing illegally logged Cambodian timber. With a reduced income stream flowing from these countries, the economic incentive for illegal logging in Cambodia could be significantly curtailed.

2. Cutting the Demand from Consumers: Red Flags for Cambodian Timber Products entering the US

Proposed changes to the Lacey Act would also expose imports of Cambodian timber to greater scrutiny. Cambodia's laws protecting forested land, combined with a government moratorium on industrial logging in concession areas, make legal, large-scale export-based logging in Cambodia almost impossible. It is worth noting that the only current form of large-scale legal logging in Cambodia—known as the "annual cutting coupe"—is explicitly designed to provide for domestic timber demand only.[26] The proposed changes to the Lacey Act to include a requirement for basic information on the country where the timber was harvested and species of timber on all timber products would immediately allow U.S. law enforcement officials to identify products manufactured using timber taken from Cambodia as suspect and encourage greater caution on the part of U.S. purchasers.

If the proposed amendments to the Lacey Act had been in place at the time of our report's publication, or indeed a over a decade ago, U.S. law enforcement agencies could have been empowered to seize suspect timber products from Cambodia and would have helped to prevent imports such as the special brand of plywood veneer produced by the Seng Keang Company, produced at such a high cost to the Cambodian population, from entering the U.S. market.

3. Setting an international precedent to combat illegal logging

The global lack of legislation to prevent illegally logged timber from entering consumer markets has inevitably meant that over the years, the US, together with every timber importing country, has unwittingly purchased illegally logged timber from large-scale organized crime networks, similar to the Seng Keang Company. By doing so, U.S. markets will have helped to fund the activities of money launderers, corrupt officials and human rights abusers.

US leadership on this issue would provide impetus for proactive actions in other markets such as the EU and other G8 countries. The logical next step for the U.S. would be to take leadership in this field one stage further, and encourage other im-

porters of timber products to adopt similar legislation to put a stop to the unregulated trade in illegal timber. Such leadership is sorely needed. Only when we have strong international action of this nature, will we able to crack down on the activities of ruthless, organized crime networks and their political patrons, who have historically been able to exploit the global gaps in legislation to their advantage.

Thank you.

Appendix 1: Chart of Legal and Contractual Breaches by the Concession Companies [27]

	Failure to invest as contract outlines	Failure to make financial deposits	No minimum annual royalty paid	No submission of financial statement	Non-compliance with EIA rules	Unacceptable forest management plan	(Extensive) illegal logging	Breach of Investment Agreement	No submission of EIA report	Inadequate technical training of staff	Operations outside concession	Illegal processing of unmarked trees	Logging without permit	Logging in wildlife sanctuary
Casotim	◆		◆		◆	◆	◆	◆	◆	◆				
Cherndar Plywood	◆		◆		◆					◆		◆		
Colexim Enterprise	◆		◆[c]		◆	◆		◆		◆				◆
Everbright CIG Wood	◆	◆	◆[b]	◆	◆	◆		◆		◆				
GAT	◆	◆	◆[d]	◆	◆	◆		◆		◆				
Hero Taiwan	◆	◆[a]	◆[e]	◆	◆	◆	◆	◆		◆	◆			
Kingwood	◆	◆[a]	◆[f]	◆[g]	◆	◆		◆	◆	◆	◆			
Mieng Ly Heng	◆[a]	◆	◆	◆	◆	◆		◆		◆			◆	
Pheapimex-Fuchan	◆	◆[a]	◆[b]	◆	◆	◆	◆	◆	◆	◆				
Samraong Wood	◆	◆	◆[b]	◆		◆		◆	◆	◆				
Silveroad		◆	◆	◆[h]		◆[i]	◆							
Samling				◆	◆	◆	◆	◆						
Superwood	◆	◆	◆	◆	◆	◆	◆[j]	◆	◆	◆				◆
Timas Resources	◆	◆	◆	◆		◆	◆[j]	◆	◆	◆				
TPP	◆	◆	◆	◆	◆	◆[k]			◆	◆				
Voot Tee Peanich	◆	◆	◆	◆	◆	◆		◆	◆	◆				
Youry Saco	◆	◆	◆	◆		◆		◆	◆	◆				

a No proof supplied to support their claims of payment
b No payment in the 2nd or 3rd years
c No payment in 1996 or 1997
d No payment before 31st December 1999
e No payment in the 2nd year
f No payment in 2nd, 3rd or 4th years
g No payment last 4 years
h No payment in last 2 years
i Concessionaire permits Thai companies to log in their concession
j Logging carried out by unknown (illegal and organised) parties
k No existing management plan at all

Appendix 2: Issues that Cambodia's Judicial Authorities Must Now Investigate		
Individuals	Activity	Relevant Laws & Penalties for Violations
Dy Chouch Seng Keang Khun Thong	Apparent detention of Lia Chhun Hua and forced takeover of Kingwood Industry Company	Law on the Aggravating Circumstances of Crimes Article 7: Detention and illegal confinement Penalty: 5-10 years in prison Article 6: Robbery Penalty: 5-10 years in prison
Seng Kok Heang	Reported attempt to kill two community forestry activists	Law on the Aggravating Circumstances of Crimes Article 3: Murder Penalty: 15-20 years in prison
Dy Chouch Seng Keang Khun Thong Seng Kok Heang	Industrial-scale logging outside the boundaries of the Tumring Rubber Plantation and cutting of thousands of resin trees belonging to local people.	Forest Law Article 98: Misuse of a permit to harvest forest products; harvesting forest products without a permit; felling rare tree species and trees that local people tap for resin Penalty: 1-5 years in prison and fines of 10-100 million riel (US$2,500-US$25,000) Land Law Article 259: Infringement against public property Penalty: 1-5 years in prison and/or a fine of 5-50 million riel (US$1,250-US$12,500) Law on the Aggravating Circumstances of Crimes Article 6: Robbery Penalty: 5-10 years in prison UNTAC Penal Code Article 52: Wrongful damage to property Penalty: 1-3 years in prison
	Transporting millions of dollars-worth of logs cut during these operations	Forest Law Article 96: Transporting forest products obtained via illegal harvesting Penalty: Fine 2-3 times the value of the forest products
	Use of 'firewood' collection permits to facilitate log transportation	Law on Taxation Article 127 & Article 135: Tax evasion Penalty: 1-5 years in prison and/or a fine of 10-20 million riel (US$2,500-US$5,000) Forest Law Article 96: Transporting forest products contrary to those described in a transport permit Penalty: Fine 2-3 times the value of the forest products
	Processing these logs	Forest Law Article 96: Processing forest products obtained via illegal harvesting Penalty: Fine 2-3 times the value of the forest products
	Transporting the finished products	Forest Law Article 96: Transporting forest products obtained via illegal harvesting Penalty: Fine 2-3 times the value of the forest products
	Selling these items	Forest Law Article 96: Trading forest products obtained via illegal harvesting Penalty: Fine 2-3 times the value of the forest products
	Payments to officials to protect or turn a blind eye to the above activities	UNTAC Penal Code Article 54: Intentional corruption Penalty: 1-3 years in prison

	Establishing an informal association dedicated to undertaking the above activities	UNTAC Penal Code Article 36: Organised crime Penalty: 3-15 years in prison
Chan Sarun	Issuing a permit that provided a cover for industrial-scale logging outside the boundaries of the Tumring Rubber Plantation and cutting of villagers' resin trees	Forest Law Article 100: Officials directly or indirectly allowing activities contrary to the Forest Law Penalty: 1-5 years in prison and fines of 10-100 million riel (US$2,500-US$25,000) UNTAC Penal Code Article 69: Complicity Penalty: the same punishment applicable to the principal offender
	Authorising construction of a veneer factory and sawmill by Seng Keang Company within Prey Long forest	Forest Law Article 30: Prohibition on constructing sawmills within 5 kilometres of the Permanent Forest Reserve Article 100: Officials directly or indirectly allowing activities contrary to the Forest Law Penalty: 1-5 years in prison and fines of 10-100 million riel (US$2,500-US$25,000)
Chan Sarun Ty Sokhun	Selling hundreds of jobs in the Forest Administration.	UNTAC Penal Code Article 38: Extortion Penalty: 3-7 years in prison and a fine of double the sum of money extorted; prohibition on standing for election or holding public office for 2 years after sentence served
Hing Bun Heang Dy Phen	Demanding and receiving payments from subordinates	UNTAC Penal Code Article 38: Extortion Penalty: 3-7 years in prison and a fine of double the sum of money extorted; prohibition on standing for election or holding public office for 2 years after sentence served
Hak Mao	Transporting millions of dollars-worth of logs and timber products sourced from areas where there are no legal harvesting operations	Forest Law Article 96: Transporting forest products obtained via illegal harvesting Penalty: Fine 2-3 times the value of the forest products
	Managing and protecting the transportation of goods on which the requisite import duties have not been paid	Law on Taxation Article 127 & Article 135: Tax evasion Penalty: 1-5 years in prison and/or a fine of 10-20 million riel (US$2,500-US$5,000) Article 128 & 136: Obstruction of implementation of tax Penalty: 1 month to 1 year in prison and/or a fine of 5-10 million riel (US$1,250-US$2,500)
	Collecting, storing and delivering these items	UNTAC Penal Code Article 51: Receiving and concealing stolen goods Penalty: 1-5 years in prison

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[2] Global Witness, "Deforestation without limits", July 2002, p.3. Between 1994 and 2000, the Cambodian government collected US$92 million in timber royalties.

[3] The World Bank, Cambodia—A Vision for Forestry Sector Development, 1999, p.i; Asian Development Bank Sustainable Forest Management Project, Cambodian Forest Concession Review Report, 2000, p.20.

[4] Global Witness interviews with local residents, 2000; UN Cambodia Office of the High Commissioner for Human Rights, Land Concessions for Economic Purposes in Cambodia, November 2004.

[5] Cited in Global Witness, "Deforestation without Limits", July 2002, p.3.

[6] The "road map" for forest sector reform is also known as the Independent Forest Sector Review. It can be downloaded from http://www.cambodia-forest-sector.net/.

[7] FAO, Global Forest Resource Assessment 2005, Annex 3—Global Tables, p. 233, ftp://ftp.fao.org/docrep/fao/008/A0400E/A0400E14.pdf. (Last downloaded 18 March 2007)

[8] Interviews with a confidential source, 2003 and 2004.

[9] In February 2007 Global Witness wrote letters to Lia Chun Hua as well as Seng Keang, Dy Chouch and Khun Thong and other Kingwood shareholders to ask about Lia's current whereabouts. At the time of publishing, Global Witness has not received any responses to these letters.

[10] This authorisation is referred to in Ministry of Agriculture, Forestry and Fisheries "Permission to Establish a Veneer Factory Granted to Seng Keang Import Export Co. Ltd", September 2004.

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[13] Interviews with local residents, 2005.

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[19] World Trade Atlas (for 2003 and 2004), http://comtrade.un.org/; China Customs Statistics Yearbook (for 2005) and China Customs (for January to November 2006).

[20] UNESCAP, "Trader's Manual for Least Developed Countries: Cambodia", 2003, http://www.unescap.org/tid/publication/ t&ipub2320_part3.pdf. (Last downloaded 10 April 2007); National Bank of Cambodia, "Stock Taking on Restrictions of Capital Flows", August 2006, http://www.aseansec.org/carh/Capital%20Account% 20regime%20files/Cambodia%20Capital%20Account%20Regime.pdf. (Last downloaded 10 April 2007).

[21] References to this threat are drawn from an article by Douglas Gillison and Yun Samean, published in the Cambodia Daily on June 5 2007. In it, the Prime Minister's brother and Kompong Cham provincial governor Hun Neng is quoted as saying: "If they (Global Witness staff) come to Cambodia, I will hit them until their heads are broken."

[22] The press release can be viewed at http://www.globalwitness.org/media_library_ detail.php/566/en/global_witness_must_stop_ activities_and_defamation_to_ discredit_the_image_of_the_royal_ government_of_cambodia_from_now_•and_for_good.

[23] See for example http://assets.panda.org/downloads/G8_ meeting_June2002.pdf; http://www.globaltimber.org.uk/china.htm; http://www.globaltimber.org.uk/indochina.htm; Deutsche Press Agency, Vietnam's furniture exporters running out of wood, June 11, 2007; in its Tropical Timber Market Report of 1-15 November 2006, the ITTO states that roughly 70% of timber which China imports is subsequently exported.

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[A letter submitted for the record by America's Imported Wood Suppliers, Distributors, and Users follows:]

America's Imported Wood Suppliers, Distributors, and Users

June 21, 2007

The Honorable Nick Rahall
U. S. House of Representatives
Washington, DC 20515

Re: H.R. 1497, the "Legal Timber Protection Act"

Dear Mr. Chairman:

We write on behalf of our collective members to register our concern about H.R. 1497, the "Legal Timber Protection Act" and ask for consideration of several critical issues in advance of consideration by the Subcommittee on Fisheries, Wildlife and Oceans. The effort to amend the Lacey Act by imposing criminal liability on U.S. businesses for their overseas suppliers' violation of "any law" is misguided. Imported wood products are legal. They are accompanied by the necessary permits, documents, and paperwork that allow them to be traded legally under international and national laws and regulations. This trade has been approved by government officials from both the country of export and country of import.

Our members include thousands of American companies with American workers that would be adversely affected by this proposal. We urge the Congress to refrain from initiating changes to the Lacey Act that would place domestic manufacturers and their U.S.-based suppliers in the untenable position of policing global laws for the following reasons:

Amending Lacey to criminalize the otherwise legal importation of wood would add significantly to the costs of doing business for legal overseas producers, U.S. importers, and the manufacturing industries using these products. Compliance to this proposed legislation would impose a costly chain of custody and certification burden on the supply chain.

Expansion of the Lacey Act would create significant uncertainty for the various industries engaged in or reliant on the importation of wood products. Such uncertainty would result because of (1) the broad applicability of Lacey Act criminal penalties to individuals within the chain of custody of plant materials that, unbeknownst to them, may have been harvested in violation of some foreign law, together with (2) the liberal interpretation that U.S. federal courts have given to the term "any foreign law" currently in the Lacey Act. Due to the lengthy chain of custody characteristic of international trade in wood products, many of the individuals and entities subject to liability under the proposed revision could not know whether the materials in their possession were taken in compliance with all foreign laws. In

essence, the illegal act of one party in a foreign country could subject numerous unrelated parties to criminal liability in the United States.

Of particular interest to American companies is the restoration of the "innocent owner" defense in any amendment to the Lacey Act. Until 2005, the Lacey Act included an "innocent owner" defense to eliminate culpability for those, at the time of acquisition, who did not know or have reason to know that their property is in the proceeds of criminal activity. A ruling by the 9th Circuit eliminated this important defense and has created a lot of uncertainty. The 9th Circuit opinion is in direct conflict with the provisions of the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA") that created a uniform "innocent owner" defense for forfeitures under any civil forfeiture statute. The "innocent owner" defense must be returned to Lacey enforcement in the original language's intent in compliance with CAFRA.

Our organizations commend Congress and the Administration's efforts to address illegal logging in foreign countries. The United States should continue to provide technical and financial assistance to foreign governments committed to the effective enforcement of their laws. We support bilateral initiatives between the United States and foreign governments developed to get at the root of illegal logging. Examples of these are the Memorandum of Understanding with Indonesia on Combating Illegal Logging and Associated Trade signed in November, 2006, which will include regional cooperation with Singapore and Malaysia; the President's Initiative Against Illegal Logging launched in July, 2003; the U.S.-China Strategic Economic Dialogue Task Force to Create Bilateral Agreement Addressing Illegal Logging and Associated Trade agreed to in May and will soon be negotiated; and the Illegal Logging Annex on Forest Sector Governance in the proposed Peru Free Trade Agreement crafted with bipartisan consensus between the Congress and Administration. Bilateral agreements between the United States and foreign governments must be given opportunities to work before Congress considers legislation that will do more harm to American business and trade than help to stop illegal activities.

We are committed to supporting initiatives that promote legal trade of sustainable forest products. The issue of how to address illegal logging in foreign countries is difficult and complex.

We urge the Congress to seriously consider unintended consequences of Lacey Act revisions on domestic U.S. industries before proceeding further down this road.

American Home Furnishings Alliance

International Wood Products Association

National Association of Home Builders

National Federation of Independent Business

National Lumber and Building Material Dealers Association

National Marine Manufacturers Association

America's Imported Wood Suppliers, Distributors, and Users

703-820-6696

[A statement submitted for the record by Barry Gardiner, MP, The Prime Minister's Special Envoy for Forestry, follows:]

Statement submitted for the record by The Honorable Barry Gardiner, Member of Parliament, The Prime Minister's Special Envoy for Forestry

My name is Barry Gardiner. I am a Member of Parliament in the United Kingdom and I welcome the opportunity to give evidence to the committee hearing in my capacity as the United Kingdom Prime Minister's Special Envoy for Forestry and also as the Co-Chair of the Illegal Logging Dialogue of the GLOBE Legislators Forum.

In my evidence I wish to suggest to the Committee that the eyes of the world are fixed on the leadership role that the United States has taken on the need to combat illegal logging. Your recognition that illegally harvested timber imports are under-

cutting domestic timber producers is one that resonates around the globe. A recent study by the American Forest and Paper Association has suggested that such imports depress prices of wood products by between 7 and 16%. This is a substantial loss to domestic producers.

This finds its counterpart in producer countries where losses from illegal logging are estimated to cost governments in the region of $15—20 billion per year in lost revenues. These are revenues that could be utilised for education, healthcare and other social programmes in some of the poorest regions of the world. This suggests that illegal logging not only distorts free and fair trade, but is also a significant contributor to global poverty and the need for aid.

It is not my purpose in this evidence, however, to reiterate the powerful economic, environmental and ethical reasons for taking strong legislative action against the illegal logging trade. I am confident that these will be made more appropriately by other individuals and organisations from within the United States. Rather, I wish to provide information to the Committee about the debate and actions being taken elsewhere in the international community that may be seen to complement and anticipate your country's decision.

International efforts over the last two decades as part of donor development programmes have largely focussed on supply-side measures by seeking to tackle forest governance. Their success has been limited. Private sector forest certification schemes which aimed to improve forest management by creating market incentives were adopted primarily by producers in temperate regions and even then did not always see the premium return on investment they anticipated.

The result is that there has been little impact on reducing illegal logging. Timber from illegal harvests, worth billions of dollars annually, has continued to pour into western consumer markets. This has led to the conclusion in certain countries that demand side, as well as supply side measures were essential if we were to succeed in tackling the problem.

Government Procurement Programmes are one way in which European and other national governments have sought to give a lead to the market. By insisting that timber and timber products used in any contract of public works must be legally sourced and sustainably managed, governments have sought to encourage major contractors to develop supply chains where timber and timber products are both legal and sustainable. Whilst such schemes play an important role in providing leadership, the fact that government procurement covers only a relatively small percentage of construction projects has meant that they have not proven effective in transforming market practice.

European Union Member States have adopted a Forest Law Enforcement, Governance and Trade (FLEGT) process whereby producer countries receive assistance to improve governance under a Voluntary Partnership Agreement (VPA). These VPAs enable countries to improve their capacity and due diligence through aid whilst developing credible licensing systems to verify that timber imported to the European Union has been legally produced.

VPAs are presently being negotiated with Malaysia, Indonesia, Ghana and Cameroon. Other African countries have indicated their interest in developing such partnerships under which border agencies in the EU would be able to deny entry to shipments of timber from partner countries unless they were covered by a FLEGT license.

Whilst FLEGT voluntary partnership agreements may prove a significant step in combating illegal logging it is important to note that the first VPA is not expected to become operational before 2009. The GLOBE Legislators dialogue on Illegal Logging, which I co-chair, has examined the potential for a wider licensing scheme at a recent conference in Berlin. Here representative legislators from a range of G8, as well as producer countries such as Indonesia, Brazil, Malaysia, DRC, Congo Brazzaville, Gabon, Cameroon and Ghana, indicated that a global licensing scheme might provide a strong measure to combat illegal logging. It is highly likely that such a scheme may form part of the recommendations made by the Globe dialogue to the G8 summit in Japan in June 2008.

Were a global licensing scheme to be adopted by the G8, it is important to appreciate the very real limitations that even such a comprehensive measure might suffer. Certain countries might still choose not to enter into the requisite voluntary partnership agreements. Furthermore, it is possible for illegally harvested timber from a voluntary partner country to circumvent the regime via trade through third (non-VPA) countries.

It is for this reason that the EU is currently examining a range of additional options which would be able to close off such loopholes. Chief amongst these is an option modelled upon the U.S. Lacey Act that effectively mirrors the provisions of the Combatting Illegal Logging Act 2007. The European Commission has completed a

public consultation on these options and is currently undertaking an impact analysis which is expected to report in early 2008.

The G8 plus 5 dialogue on Illegal Logging that was launched at the Gleneagles Summit in 2005 is due to conclude under the Japanese presidency next June. The US, therefore could not be considering this legislation at a more important time. It is not too strong to suggest that decisive action by the U.S. to combat illegal logging through this legislation could set a precedent that would be followed, not only by the European Union, but by much of the rest of the world.

In a telephone conversation with the Japanese forestry Minister earlier this year, before his untimely death, Minister Matsuoka stated to me that he considered the possibility that the United States might pass the Combatting Illegal Logging Bill as "Epoch Making". Minister Matsuoka was a personal friend and long standing champion of the battle against illegal logging. I knew him not to be a man of grandiloquent statement. I therefore asked the translator whether she was sure that she had translated him correctly in saying this. She spoke with him again and confirmed that these were indeed the words he intended.

I believe that Minister Matsuoka was right. The United States has the capacity to precipitate a global fightback against illegal logging. The legislation proposed is elegant and non-bureaucratic. It applies Occam's razor to the problem by forcing due diligence back down the supply chain, rather than by insisting on specific burdensome documentation. It encourages suppliers to take the trouble to do things properly from the very beginning.

It is my firm view that both supply side and demand side measures must be employed in our determination to end this unfair and illegal trade. It is a trade that undercuts legitimate businesses and impoverishes still further some of the poorest communities in the world. If we examine the different ways of tackling the problem, we find:

- Governance reform in producer countries through donor assistance.
- Systems of forest certification.
- Procurement regimes that favour legally harvested and sustainable timber in consumer countries.
- Licensing schemes.

All of these have a role to play in the fight against illegal logging. But the Combatting Illegal Logging Act 2007 is far and away the least cumbersome, and most elegant weapon in our armoury. It adds no burden to the people who are already getting it right and it incentivises those who know they are currently getting it wrong, prompting them to do the right thing. That is what good law should be all about.

[A letter submitted for the record by Brad Gilman, Robertson, Monagle & Eastaugh, on behalf of Trinity Yachts, Inc., follows:

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ADMITTED IN VIRGINIA *
AND ALASKA

ADMITTED IN VIRGINIA **
WASHINGTON, D.C. AND ALASKA

ALL OTHERS ADMITTED
IN ALASKA

NON-LAWYER, PROFESSIONAL +

September 6, 2007

The Honorable Charles Boustany
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Boustany:

John Dane has asked me to let you know of Trinity Yachts' strong concern about H.R. 1497, legislation introduced by Representative Earl Blumenaur to combat illegal logging in foreign countries through amendments to the Lacey Act.

Trinity Yachts supports over 300 direct jobs in New Orleans constructing luxury yachts. All of these craft use imported teak for decks and caprails. Trinity has been informed that H.R. 1497, if enacted, would expose it to civil and potentially criminal liability under the Lacey Act for any teak products used in the construction of yachts which were illegally harvested in foreign parks, forest reserves or other officially protected areas.

Trinity Yachts does not condone illegal teak harvesting activities. The problem with this legislation, however, is that we buy processed teak from manufacturers who control the purchase of the original lumber. Trinity is a small business. The company does not have the internal resources to police the practices of foreign secondary processors of teak products. We have no ability to determine, and subsequently certify, that the teak products were harvested legally. The bill exposes Trinity to civil and criminal penalties, yet it does not provide any mechanism for Trinity to protect itself against false representations of foreign manufacturers that the wood was harvested legally.

Trinity Yachts has managed to restore its shipyard in New Orleans with great difficulty after we were wiped out by Katrina. This legislation will cause real problems for Trinity's New Orleans operation. We are therefore asking you to oppose enactment of this legislation unless the bill sponsors include provisions in the bill that protect innocent U.S. small businesses from civil and criminal exposure. Please feel free to contact me at 703 527 4414 with any questions or comments.

Sincerely,

Brad Gilman
On Behalf of Trinity Yachts, Inc.

Cc:

The Honorable Nick Rahall
Chairman
Committee on Natural Resources
1324 Longworth Bldg.
Washington, D.C. 20515

The Honorable Don Young
Republican Ranking Member
Committee on Natural Resources
1329 Longworth Bldg.
Washington, D.C. 20515

The Honorable Madeleine Bordallo
Chairwoman
Subcommittee on Fisheries, Wildlife and Oceans
187 Ford Bldg.
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The Honorable Henry Brown, Jr.
Republican Ranking Member
Subcommittee on Fisheries, Wildlife and Oceans
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[A statement submitted for the record by Dr. James Grogan, Yale University School of Forestry & Environmental Studies, New Haven, Connecticut, follows:]

Statement submitted for the record by Dr. James Grogan, Yale University School of Forestry & Environmental Studies, New Haven, Connecticut, & Instituto do Homem e Meio Ambiente da Amazônia (IMAZON), Belém, Pará, Brazil

I welcome this opportunity to provide a statement supporting H.R. 1497, Legal Timber Protection Act, legislation that would amend the Lacey Act Amendments of 1981 to prohibit trade in the United States in timber harvested illegally from any domestic or international source.

I received a PhD in Forest Ecology from Yale University's School of Forestry & Environmental Studies in 2001. I have spent a total of 12 years conducting fieldwork in the Brazilian Amazon, five of those years researching my doctoral dissertation, "Bigleaf Mahogany (Swietenia macrophylla King) in Southeast Pará, Brazil: A Life History Study with Management Guidelines for Sustained Production from Natural Forests." I have also participated in the policy debate about mahogany's commercial and conservation status by providing technical advice to the forest products industry, the Brazilian government, and the international community through CITES Working Groups on Mahogany.

In my view, the proposed amendment to the Lacey Act would provide a powerful mechanism for preventing illegally sourced supplies of high-value Amazonian timber from entering the U.S. market. This would: 1) protect highly vulnerable natural timber populations from commercial extirpation and encourage the transition to sus-

tainable forest management systems; 2) reduce pressure on unlogged primary forests, thereby slowing rates of deforestation and associated emissions of greenhouse gases; and 3) reduce conflict between loggers and indigenous peoples facing illegal incursions into their territories.

I began my study of mahogany after the unsuccessful 1994 proposal to list mahogany on CITES Appendix II. While relatively little was known at that time about the natural history of mahogany or its ecology, there was agreement in the field that an accurate assessment of the commercial and conservation status of mahogany would require this information. Consequently, I went to Brazil looking for field sites to study mahogany. The USDA Forest Service's International Institute of Tropical Forestry was the principal funder for my doctoral research. Since beginning this work I have published numerous scientific and technical articles on mahogany and related topics. A copy of my curriculum vita is attached to this statement.

International demand for high-value tropical timbers like mahogany, Spanish cedar (Cedrela odorata), ipê (Tabebuia spp.), and ramin (Gonystylus spp.) is the root cause of continued illegal exploitation of these species from ever more remote American, African, and Asian tropical forests. But illegal logging contravenes forest laws in all producer nations meant to protect renewable natural resources from uncontrolled, unsustainable exploitation. Further, by allowing illegal supplies into our markets, we undermine the business model of legal producers by sustaining demand for cheaper, destructively harvested supplies.

The impact of illegal logging on natural populations

Being highly sedentary creatures, timber trees are especially vulnerable to illegal exploitation—there is little hiding a mahogany tree worth thousands or even tens of thousands of dollars in finished lumber, no matter how remote its forest habitat. Plants are at least as vulnerable to population collapse after illegal harvests as animals and fish, and in my view should be afforded the same protections under the Lacey Act.

Tropical trees typically occur at extremely low densities across large areas. In the densest commercial stands of big-leaf mahogany recorded in Brazil, one commercial tree occurred in every five acres of forest, while more common densities were one commercial tree in 20 acres. Facing no constraints on harvest intensity or methods, illegal loggers locate and fell 95% or more of trees that can pay their way out of the forest, including trees smaller than legal minimum diameter felling limits. While adult and sub-adult populations are removed at extremely high rates, seedlings and saplings are rarely in place in closed forest at the time of logging to replace harvested trees. In combination, this means that population recovery after logging will take a century or more, if it will be possible at all, assuming that logged forests can be left to recover without further intervention.

As timber species become commercially extirpated at local scales, illegal loggers shift their activities deeper into unlogged primary forests in search of fresh supplies, and local zones of commercial exhaustion coalesce into regional and then national zones where future harvests are imperiled. This has been the pattern for big-leaf mahogany in Latin America for over two hundred years now, but especially in recent decades in South America. This pattern currently continues in Peru in spite of mahogany's 2002 listing on CITES Appendix II, and is being repeated for other high-value species in the Amazon such as Spanish cedar, ipê, and jatobá (Hymenaea courbaril).

The impact of illegal logging on forests

Illegal logging is driven by market demand creating prices high enough to offset risk associated with unlawful activities in remote forest regions. Illegal loggers open roads extending hundreds of miles from frontier sawmill processing centers into unlogged forests. Researchers at the Instituto do Homem e Meio Ambiente da Amazonia (IMAZON), my institutional affiliation in Brazil, estimate that mahogany could be profitably—if currently illegally—logged within up to 99% of its natural range in Brazil, including some of the most remote southwestern Amazon forests remaining in the states of Amazonas and Acre. As has been well documented, these roads open previously inaccessible regions, including Indigenous Lands and protected areas, to agribusiness, cattle ranchers, and small-holder agriculturists, initiating large-scale deforestation and land-use transformation. By occurring rapidly and without planning, this process is generally chaotic, destructive, and frequently marred by violence.

The impact of illegal logging on people

Illegal logging brings with it a host of unavoidable negative consequences for forest communities. In the Amazon, indigenous peoples generally have few resources to defend against loggers illegally extracting high-value timbers from their terri-

tories. Indigenous Lands were exploited throughout Brazil during the 1980s and 1990s for mahogany, with or without consent from indigenous communities, often by violent means costing indigenous lives. This occurred as well in Bolivia and Ecuador, and continues today in Peru. As logging fronts penetrate deeper into primary rainforests, bringing land-use changes and market centers with them, indigenous communities must cope with deforested border areas prone to frequent fires, and with repeated incursions by loggers, ranchers and settlers into their territories.

Rather than building a trained labor force capable of planned, best-practices forest management in regions with vast potential for long-term sustainable timber production, illegal loggers provide low-wage employment for unskilled workers under extreme and exploitative working conditions. I have seen many of these operations in the field; disease, injury, and even fatality from logging accidents are common, in sharp contrast with legal logging outfits that comply with forest and labor laws, producing timber under current best-practices management systems.

How H.R. 1497 would help curtail illegal logging

Big-leaf mahogany's eventual listing on CITES Appendix II in 2002 was in large measure an international response to widespread illegal logging in Brazil during the 1990s. But this response came very slowly, after nearly a decade of wrangling among nations, and only after the Brazilian timber sector specializing in mahogany—and its principally North American clients who underwrote their activities—essentially got what it wanted, which was time enough to exploit Brazil's remaining high-density stands before the gates closed against illegal supplies. No legal mechanism existed in the US, destination for more than 90% of internationally traded volumes of mahogany during that period, to address widespread illegality in the trade that was acknowledged by industry and government sources alike. This problem has persisted with Peruvian mahogany even after the 2002 CITES listing.

H.R. 1497, the Legal Timber Protection Act, the proposed amendment to the Lacey Act, would combat and curtail illegal logging by creating a powerful mechanism to challenge the legal status of timber supplies arriving in the US, the largest market in the world for timber products, where demand for high-value timber drives illegal and unsustainable logging practices in many tropical regions. Such a mechanism could have been used to halt imports of illegally harvested mahogany from Brazil during the 1990s, to the benefit of natural populations that would today be available for sustained-yield management, of vast forested regions where deforestation rates would have been much slower (and greenhouse gas emissions from burned forests much lower), and of forest communities for having fewer conflicts and high-value forest resources preserved for future use.

The Legal Timber Protection Act could halt the entry of illegal timber supplies into the U.S. market. By doing so, it could as well slow the current rapid loss of high-value timber populations, reduce rates of deforestation in the tropical world with associated greenhouse gas emissions, and prevent conflicts between loggers and indigenous peoples.

I thank the Subcommittee on Fisheries, Wildlife, and Oceans for this opportunity to comment on the proposed change in U.S. federal legislation.

A statement submitted for the record by Ari Hershowitz, Director, Biogems Project, Latin America, Natural Resources Defense Council, follows:]

Statement submitted for the record by Ari Hershowitz, Director, Biogems Project, Latin America, Natural Resources Defense Council

I am pleased to submit this statement for the record regarding H.R. 1497, the Legal Timber Protection Act on behalf of the Natural Resources Defense Council and our more than one million members and activists. We strongly support this bill and its simple goal to make it illegal to import and trade in illegal timber.

As the Subcommittee has heard, the trade in illegal timber supports a worldwide network of criminal activities that devastates forests and wildlife, contributes to global warming, and causes more than a billion dollars in yearly losses to U.S. industry. NRDC can provide additional information, from our direct experiences in Peru, on the impacts of this illegal trade.

This statement, however, focuses on the forfeiture provisions of the bill, and clarifies some of the misleading information presented by the bill's opponents. This bill would authorize the forfeiture of timber and timber products when U.S. authorities can prove that these items were taken illegally. This is consistent with decades of

U.S. precedent for other stolen or illegal goods, including natural resource products such as wildlife and plants.

ILLEGAL PROPERTY HAS BEEN SUBJECT TO FORFEITURE UNDER LONGSTANDING U.S. LAW

Whether the subject is protected parrots, illegally imported salmon, pilfered Inca artifacts, or stolen art, U.S. law has consistently provided for in rem forfeiture, regardless of the knowledge of the person in possession of the items. To do otherwise, as opponents of this bill recommend, would allow illegal goods to continue in commerce even after the government had proven that they were illegal. This is a brazen proposition. It would be a radical departure from existing law and longstanding practice.

Contrary to the claims of this bill's opponents, the Lacey Act has consistently and repeatedly been interpreted to provide for forfeiture of illegal wildlife regardless of the knowledge of the importer. In a case involving the imports of parakeets from Peru, the court held that "the legislative history of the applicable amendments of the Lacey Act unequivocally establishes that the defense of "innocent owner" is not available in forfeiture actions of wildlife brought pursuant to this Act." U.S. v. 2,507 Live Canary Winged Parakeets, 689 F. Supp. 1106 (S.D. Fla., 1988) (emphasis added). In an even earlier decision, the Ninth Circuit Court of Appeals upheld forfeiture of Indonesian parrots that were imported through Singapore, although the importer did not know that the original export from Indonesia was illegal. The court held that "[t]he conservation purpose of the statute could be undermined significantly by permitting such importers to avoid the application of the statute by trading through intermediary countries." 685 F.2d at 1134 (emphasis added).

This is no less true for timber: allowing anyone to maintain possession and profit from illegal property, as opponents of the bill recommend, creates a perverse incentive for foreign timber mafia to pass off their merchandise through unsuspecting intermediaries.

Indeed, the Civil Asset Forfeiture Reform Act (CAFRA), which opponents of H.R. 1497 hold up as their model, makes it clear that "no person may assert an ownership interest under [CAFRA] in contraband or other property that it is illegal to possess." 18 USC § 983(d)(4). This simply restates the traditional U.S. rule that a purchaser of stolen or otherwise illegal property—even a good faith purchaser—does not get good title to the property. The courts have consistently applied this rule to wildlife trade, both before and after CAFRA. Deep Sea Fisheries, Inc. v. 144,774 Pounds of Blue King Crab, 410 F.3d 1131 (9th Cir. 2005). (Rejecting an importer's ownership claim to 600,000 pounds of salmon exported from Taiwan without the necessary permits and finding that, by violating the Lacey Act, the salmon constitutes "contraband or other property that it is illegal to possess.")

The Lacey Act's forfeiture provisions are also consistent with the treatment of other kinds of illegally obtained property under U.S. law. For example, imported cultural artifacts are subject to forfeiture regardless of the knowledge or culpability of the importer. See David N. Chang, Stealing Beauty: Stopping the Madness of Illicit Art Importation, 28 Hous. J. Int'l L. 829, 857 (2006). The Convention on Cultural Property Implementation Act (CPIA) empowers U.S. officials to seize illegally imported foreign cultural property and restrict its importation. Under the CPIA even a "good faith purchaser"—while immune from criminal prosecution—must still give up the pieces, usually to be turned over to the country of origin. Some foreign jurisdictions, like Switzerland, previously allowed good faith purchasers to keep stolen goods, but "U.S. courts have generally rejected application of the Swiss rule. See, e.g., Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc., 917 F.2d 278 (7th Cir. 1990)(rejecting defendant's claim to have acquired good title to stolen Byzantine mosaics and applying Indiana's rule that a thief cannot transfer good title even to a good-faith purchaser)." Patty Gerstenblith & Bonnie Czegledi, International Cultural Property, 40 Int'l Lawyer 441, 445 n.25 (2006). See also U.S. v. An Antique Platter of Gold, 184 F.3d 131 (2d Cir. 1999) (Holding that there is no "innocent owner" defense to forfeiture of an item of "classic contraband, an item imported into the United States in violation of law.")

Opponents of this bill do not present a single example of illegally sourced property that is not subject to forfeiture under U.S. law. Yet they say that timber should be treated differently—that the chain-of-custody of timber is too hard to trace. This claim simply does not stand up to decades of experience with stolen cultural artifacts, World War II era paintings or wildlife. Timber is far more massive than any of these items; in many cases, timber-bearing trucks can be seen from satellite imagery. And timber has a single, identifiable geographic source: a tree. If any item in commercial trade could be traced, it is timber. The fact that the chain-

of-custody of timber generally cannot be traced today points precisely to the need for this legislation.

It is the nature of an illegal trade network that the origins of its products are hard to trace, and this makes it harder for honest people to do business. It is the job of governments to create incentives to bring such trade into the open.

H.R. 1497, with the amendments introduced by Congressman Blumenauer, will create these necessary incentives. That is why we proudly join a broad coalition of industry, labor and environmental groups to support this bill, and we thank the Subcommittee again for the opportunity to submit these comments.

[A letter submitted for the record by Jane Hogan, Secretary-Treasurer, Ontario Hardwood Co., Inc., follows:

Jane Hogan
Ontario Hardwood Co., Inc.
190 West Ontario Road
Keysville, VA 23947

September 4, 2007

The Honorable Henry E. Brown, Jr., Ranking Member
Subcommittee on Fisheries, Wildlife and Oceans
Committee on Natural Resources
US House of Representatives
Washington, DC

Dear Representative Brown:

In regard to HR 1497, the Legal Timber Protection Act, please enter into your records this letter of opposition to the domestic portions of the bill.

The bill's worthy purpose of preventing illegal timbering in China, Russia, Brazil and Indonesia should not be expanded to Federal oversight of State logging regulations in the United States. I disagree with the paper and hardwood industry endorsement of the domestic clauses of the bill because the bill duplicates existing State law and will lead to unintended consequences of over-regulation.

The incidence of illegal logging in this country in parks, reserves and specially designated places is minimal, as is the failure to pay stumpage fees. Land management personnel already have full enforcement authority. The Animal and Plant Health Inspection Service needs to devote its resources to combating illegal timber products from oversees without dilution to enforce violations of State law.

There is no need to dilute the Lacey Act and over-regulate logging inside our borders. Please strike these sections from HR 1497.

Sincerely,

Jane Hogan
Secretary-Treasurer

[A letter submitted for the record by Lawrence Q. Hutchins, President, Quail's Nest Industries, follows:]

Quail's Nest
Industries, Inc.
Specializing in Allegheny Hardwoods

September 9,2007

The Honorable Henry E. Brown, Jr., Ranking Member
Subcommittee on Fisheries, Wildlife and Oceans
Committee on Natural Resources
US House of Representatives
Washington, DC

I am strongly opposed to the parts of HR 1497, the Legal Timber Protection Act, that attempt to regulate logging in the United States.

While the bill's purpose is to stop illegal logging in the Far East and South America it should not be expanded to logging in the United States. It overburdens State law and makes a mockery of the purpose of our Animal and Plant Health Inspection Service (APHIS).

Don't reinvent the wheel. Illegal logging in this country in parks, reserves and specially designated places happens rarely and is by accidental error in boundary locations. State foresters already deal with cases like these.

Don't dilute APHIS efforts to combat timber theft oversees and invasion by pests. Stronger efforts at our borders to prevent the entry of forest pests such as the Emerald Ash Borer would produce far greater benefits to America's forest products industry.

Please enter these comments into your records and also delete the domestic logging parts of the bill.

Sincerely,

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A statement submitted for the record by Peter T. Jenkins, Director, International Conservation, Defenders of Wildlife, follows:]

Statement submitted for the record by Peter T. Jenkins, Director of International Conservation, Defenders of Wildlife

Madam Chairwoman and members of the subcommittee, I am writing on behalf of Defenders of Wildlife ("Defenders") regarding the legislative hearing on H.R. 1497 to amend the Lacey Act Amendments of 1981 to extend its protections to plants illegally harvested outside of the United States, and for other purposes ("Legal Timber Protection Act"). Defenders endorses the testimony provided by Alexander von Bismarck of the Environmental Investigation Agency ("EIA") on the above Act, and would like to present additional background information to support this position.

Defenders of Wildlife was founded in 1947 and is a national non-profit organization with more than 500,000 members and supporters dedicated to the protection and restoration of all wild animals and plants in their natural communities. The major cause for the current decline in biodiversity is habitat loss and fragmentation. Defenders is working to protect important habitats and keystone species, with the understanding that the protection of these species is vital to the health and stability of the greater ecosystem and other species.

Global forests represent critical habitats for a variety of species, and are under threat worldwide by unsustainable harvesting and illegal logging. Curbing the trade in illegally sourced wood and wood products is vital in protecting species that rely on intact and unfragmented forest habitat.

Wildlife are affected by illegal logging primarily through the loss and fragmentation of habitat, but also through a subsequent rise in illegal hunting and trade in meat products, through increased human-wildlife conflict, and by the heightened risk of emerging diseases transferred between humans and wildlife. On a broader level, illegal logging affects people and wildlife worldwide through the loss of ecosystem services such as carbon sequestration and the regulation of climate and rainfall. As documented in the Stern Report in 2006, deforestation causes 24% of global carbon dioxide emissions and 18% of global greenhouse gas emissions, amounting to more emissions than all transport worldwide.

The following are examples of species under threat largely because of deforestation. These species would benefit directly from increased protection through the passing of H.R. 1497:

Borneo and Sumatra—Home of the Orangutan:

Orangutans require a large home range. Bornean forests generally support no more than one to three orangutans per square kilometer, and Sumatran forests at most six or seven. Indonesia is undergoing some of the most rapid deforestation in the world, and is likely to lose all of its primary forest by the year 2012. By 2022, Sumatra and Borneo are likely to lose 98% of their remaining forest. A report published by the United Nations Environment Programme (UNEP) in 2007 declared a state of emergency for the orangutan, predicting the species to go extinct within the next 20 years. Approximately 80% of timber exported from Indonesia is believed to be illegally sourced.

The Congo Basin—Apes, Bushmeat and Emerging Diseases:

The Congo Basin constitutes the world's second largest forest, and is home to a rich diversity of plants, animals, and indigenous peoples. Due to poor local legislation and law enforcement and often backed by international financial institutions and foreign-owned banks, illegal logging remains a large problem. In addition to the obvious problems associated with habitat loss and fragmentation, the illegal timber trade in this region is also associated with the illegal trade in wild meat, or bushmeat, including gorillas and chimpanzees, and other protected species. This carries not only risk of extinction for local ape populations, but also poses a serious disease risk to the local human population, as documented by repeated outbreaks of the Ebola virus and other zoonotic diseases associated with the handling and consumption of bushmeat.

Russia's Far East—Habitat of the Amur Leopard and Siberian Tiger:

Illegal logging does not merely affect tropical species. In the Russian Far East, approximately half of all timber harvested is done so illegally, and contributes to lasting corruption within state forest management and the timber industry. The Amur leopard is the rarest felid species on earth, with only 25-34 individuals currently remaining in the wild. Though also critically endangered, the Siberian tiger fares slightly better with up to 520 remaining individuals in the wild. A report by the World Wildlife Fund in 2002 linked the future risk of extinction for the Amur leopard and the Siberian tiger to illegal logging.

Amazon Basin—Mahogany:

Illegal logging of mahogany is not only detrimental to the survival of the species and to the ecosystem at large; it also constitutes a grave threat for several indigenous peoples that have been living in chosen isolation in the Peruvian Amazon, through forced labor in indentured servitude, exposure of novel diseases, and direct violent conflict with representatives of the illegal logging industry. In 2005, 83% of all mahogany exporters from Peru were involved in the trade in illegally-sourced mahogany, in direct violation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). Mahogany represents a species that is difficult to regenerate.

CONCLUSION

For the reasons stated above and in the EIA testimony, we endorse an amendment to the Lacey Act as proposed in H.R. 1497.

[A statement submitted for the record by the World Wildlife Fund and TRAFFIC follows:]

Statement submitted for the record by the World Wildlife Fund & TRAFFIC

Thank you for the opportunity to provide written testimony on the Legal Timber Protection Act (H.R. 1497). World Wildlife Fund (WWF) is the largest private conservation organization working internationally to protect wildlife and wildlife habitats. We currently sponsor conservation programs in more than 100 countries, thanks to the support of 1.2 million members in the United States and more than 5 million members worldwide. TRAFFIC is the wildlife trade monitoring program of WWF and IUCN-World Conservation Union (IUCN), and is a global network, with 25 offices around the world. TRAFFIC works to ensure that trade in wild plants and animals is not a threat to the conservation of nature. This testimony is on behalf of both WWF and TRAFFIC. The testimony discusses the following: (1) WWF's interest in H.R. 1497; (2) background on the illegal timber trade; (3) current efforts to address illegal timber trade; (4) the importance of H.R. 1497; (5) WWF's comments on H.R. 1497; and (6) implementation of H.R. 1497; and (7) a conclusion.

1. WWF Interest in H.R. 1497

WWF's interest in H.R. 1497 stems from its work conserving important forest eco-regions across the globe. These include Borneo-Sumatra, the Congo Basin, the Amazon, Russia (the Amur) and China (the Heilong). The illegal timber trade threatens our work in each of those eco-regions. For example, in the Russian Far East, we have witnessed the widespread use of "cleansing logging" permits—issued to remove wind-fallen trees—as tools to remove commercial volumes of timber at an industrial scale. We have also witnessed logging in legally designated protected areas. Such logging frequently occurs in and has destroyed some of the best available habitat for the critically endangered Siberian (Amur) tiger. WWF has documented the extensive and complicated supply chains of this illegally logged oak, ash and birch wood from the stump in the Russian Far East to specific Chinese factories and all the way to the shelves of specific, well-known American flooring and furniture retailers. In an effort to stem this trade flow, WWF has trained Russian and Chinese border guards on how to identify forged or falsified timber documents and has worked directly with Russian wood suppliers and Chinese buyers towards phasing out illegally logged wood from their supply chains.

In Indonesia, our Eyes on the Forest ground team (http://www.eyesontheforest.or.id/) issues regular eyewitness reports of high-value wood being harvested in legally protected areas, sometimes in collusion with government officials, and sent to high volume pulp and paper mills with markets in the U.S., Japan, China and Europe. WWF has worked with the government of Indonesia, World Bank, USAID and others for several years to develop practical trade and policy-related solutions to the illegal logging problem in that country.

In the Peruvian Amazon harvest and trade of valuable timber species such as bigleaf mahogany and Spanish cedar, a key national economic development activity, has been seriously undermined by illegal logging. WWF is leading a dynamic partnership with selected private forest concessions, enterprises and indigenous communities, in cooperation with Peruvian government agencies and regional and local governments and international aid agencies such as USAID and WWF-Netherlands, to promote a legal and sustainable forest trade in this region. The partnership vision is that, by 2015, 2 million hectares of forest concessions and 500 thousand hectares under indigenous communities will be certified; an economically viable and so-

cially responsible forest sector, based on competitive and innovative forest enterprises, offering high quality wood products legally will be established and; Peru's forest exports will top U.S. $500 million per annum, from legal and verifiable sources and chains of custody, directly benefiting local communities and forest enterprises.

Given the significant investment that WWF has made in protecting these and other forested eco-regions around the world, and our significant investment in supporting the development of legal and sustainable wood products trade globally, we take the threat of illegal logging very seriously. It is our belief that H.R. 1497 will help drive the demand for legally sourced wood, and as such, will contribute significantly to global forest conservation and sustainable use.

2. Background on the Illegal Timber Trade

Illegal logging, defined here as the harvesting, transporting, processing or trading of wood in contravention of national and international laws, plagues the global forest products industry. The criminal wood trade transpires in a number of ways, including: logging in protected areas or national parks; over-harvesting or disobeying cutting permit prescriptions; and avoiding government tax and royalty payments. Roughly one-third of hardwood products traded globally are thought to be of suspicious origin and 10% of U.S. wood-based imports are sourced from areas of high risk for illegal wood export. While illegitimate forest harvesting is mostly relegated to developing and transitional economies marked by poor national governance and corruption, much of this wood enters the world-wide market. The United States is the largest forest products consumer in the world, imports 20% of global forest products exported and is a significant importer of "emerging market" wood where illegal logging is at its worst. Over the last 6 years, according to ITC data, U.S. wood product imports increased by almost 60%. As such, American consumers are unwittingly complicit in driving illegal logging overseas.

From an environmental perspective, illegal logging contributes to uncontrolled deforestation and degradation; each year we permanently lose 50 million square miles of forest, roughly the size of Louisiana, to non-forest land uses of lesser environmental value. Forests, in protecting wildlife and fish habitat, biodiversity, soil, water and air quality, play an irreplaceable role in ecological and human health. Illegal logging jeopardizes these values. Additionally, deforestation contributes up to 20% of global carbon emissions and thus has a significant impact on climate change.

Furthermore, illegal logging has been associated with a number of separate but indirectly related natural resource crises such as wildlife smuggling, flooding, the criminal setting of large-scale forest fires for the purpose of land conversion to monoculture commodities such as palm oil, and the building of non-sanctioned and poorly designed road systems throughout once pristine tropical ecosystems. These serious environmental issues are oftentimes accompanied by even more serious social issues. Over 50 million indigenous people depend on forests for their livelihood and cultural identity. Illegal logging can put native customary land rights, whether communal or otherwise, for hunting, fishing, and farming and subsistence at risk. Competition over resources sometimes results in violence and human rights violations. In many developing economies where gazetting of land and legal establishment of land tenure are incomplete, local communities and indigenous groups are especially challenged with defending their land and forest rights. Poor forest governance contributes both to environmental and social degradation.

For some, even more alarming than these environmental and social impacts are the economic repercussions of the illegal timber trade. Illegal timber can be bought at half the price of legal timber in certain regions, artificially depressing global wood prices by 7-16%. The World Bank estimates that illegal logging costs the forest industry over $10 billion per year and governments an additional $5 billion annually. In the United States alone, the domestic forest product industry loses approximately $1 billion a year in export opportunity costs and undervalued sales. For the American forest products industry where purchased wood inputs can comprise up to 40% of the cost of production, these losses represent a significant hit on margin.

The myriad impacts of illegal logging are clearly demonstrated in the case of Indonesia, where the forest products industry accounts for 20% of the nation's non-energy exports. Even the most conservative estimates indicate that over 60% of Indonesia's natural hardwood production is illegitimate. The country is losing forests at an unprecedented level, with nearly 7,800 square miles disappearing annually. Most of its tropical lowland forests are expected to be cut over within the next decade, jeopardizing the thousands of endemic species which inhabit them, and the long-term survival of some of the most charismatic fauna in the world such as the endangered tiger, Asian elephant, Sumatran rhinoceros, and orangutan. Valuable tropical tree stands are cut unsustainably, at times replaced with acacia and palm oil

monocultures, leading to a decrease in tropical timber wood supply, a simplification of the forest products economy and a creation of unfortunate opportunity costs to national economic development. Furthermore, the Indonesian government is deprived of over one third of its potential forest industry revenues in unpaid taxes and fails to collect on $650 million annually in reforestation fund repayments and royalties alone. Losses of potential revenue translate to lost opportunity for sustainable economic development. Clearly Indonesia is suffering on several levels as a result of the unlawful timber trade.

While deforestation is caused by both conversion and illegal logging, it is important to recognize that the "informal" timber industry is typically the gateway to other major drivers of deforestation. By its very nature, illegal logging is devoid of long-term planning for a sustained timber-based economy, thus facilitating land use conversion to other uses. For example, large-scale and illegal forest clearing of both low- and high-value hardwoods in Sumatra by the pulp and paper industry has made way for the palm oil industry to establish itself. Large-scale and illegal clearing and road building of the Brazilian Amazon jungles for tropical plywood and sawn-wood has made way for the soy bean industry to greatly expand its presence. Both the initial social, environmental and economic impacts of the "informal" timber industry, as well as its gateway effect, should give rise to deep concern on the part of the U.S. government.

3. Current Efforts to Address Illegal Timber Trade

Given the significant negative impacts of illegal logging on the lawful wood products industry, President George W. Bush created the "Initiative Against Illegal Logging" (PIAIL) in 2002 to support supply-side solutions to illegal logging within developing, producer countries. More than $15 million were contributed to partnership projects under the PIAIL, adding to the millions more invested under complementary public-private partnerships supported by non-governmental organizations like WWF over the last decade. As a result of these efforts, several useful tools were created, enhanced or adapted to combat the illegal wood trade including legality verification, remote-sensing forest monitoring, timber tracking, reduced impact logging, community-based forest management and protection and corporate responsible procurement programs. TRAFFIC has even helped to develop legality standards for Malaysia, Vietnam, China, Republic of Congo, Democratic Republic of Congo, Gabon, and Central African Republic

Although these supply-side measures are important steps to addressing the problem, illegal logging continues relatively unabated because there is still a market for cheap, criminally procured, raw materials. As long as the buying market remains neutral on the legality issue, rampant unlawful logging will persist. In the words of Indonesian Forest Minister Mohamad Prakosa, "Expecting or asking one country to combat illegal logging while at the same time receiving or importing illegal logs of course does not support efforts to combat these forest crimes. In fact "allowing import and trade [in] illegally cut timber and associated products could also be considered as an act to assist or even to conduct forest crime."

Industry players on the buying side have responded to this challenge in a number of different ways including seeking legality verification, certified chain of custody and controlled wood, creating wood traceability and supplier audit programs, using technology such as Radio Frequency Identification (RFID) tags and genetic testing to verify log origin, partnering with environmental groups on stepwise programs to identify and eliminate unwanted wood such as the WWF Global Forest & Trade Network (GFTN), and even boycotting entire geographic regions in order to minimize their risk of inadvertently procuring illegitimate wood. These actions have yielded some positive results. For instance, over 13% of globally traded wood is managed under GFTN's stepwise program to eliminate unwanted wood from supply chains. However, market penetration of these voluntary and sometimes costly efforts is not deep or broad enough to keep up with the rapid pace of illegal logging and deforestation. Industry-wide actions are needed to really transform the marketplace.

Recognizing the need for universal demand-side measures, the EU is developing Voluntary Partnership Agreements (VPAs) with several producer countries identified as being at high risk for trading in illegal wood. Under the VPAs, licensing systems are being developed that will help importers distinguish between sanctioned and non-sanctioned exports. Timber products originating from partner countries but lacking the appropriate license will not be allowed entry into the EU.

The United States has also recognized the need for demand side measures, stating at the 2005 G8 in Gleneagles, "We agree that tackling illegal logging requires action by both timber producing and consuming countries...We will act in our own countries...to halt the import and marketing of illegally logged timber."

4. The Importance of H.R. 1497

Despite a desire by the U.S. government to address illegal logging, the U.S. government still lacks a legal mechanism to identify or exclude most categories of illegal wood as it enters the U.S. Unless a tree species happens to be one of the relatively few covered under the Convention on International Trade in Endangered Species (CITES) or the Endangered Species Act (ESA), there is no legislative or regulatory remedy available to address the illegal wood import issue. Under the status quo, even if the Department of Justice has full knowledge of imports of wood illegally harvested elsewhere but not listed under CITES or the ESA, it can take no action against the perpetrators.

Without a universal requirement to conduct some credible level of due diligence when importing wood from risky regions, lawful U.S. industry actors must continue to compete with unlawful or less than scrupulous industry actors who enjoy cheaper wood prices afforded by illegal production and/or who expend less time and resources in monitoring their supply chain. However, any universal requirement for due diligence must not be overly-prescriptive, create unnecessary documentation or push costly bureaucratic solutions that would severely disrupt or harm businesses that are taking due care in their importing. A balance must be struck between protecting lawful businesses from undue bureaucracy and ensuring careful due diligence that excludes illegal wood from the supply chain.

WWF's Global Forest & Trade Network works with wood importers and retailers in the United States, as well as wood product manufacturers and forest managers in many of the regions where illegal wood trade is an issue such as Southeast Asia, West Africa, and Amazonia, to identify and address illegal wood in the supply chain. We, and the American companies that we work with, including Wood Flooring International and Lowe's, ask the U.S. government to support our efforts by passing laws that will create disincentives for trading in illegal wood; such an action on the U.S. government's part will even our playing field.

5. WWF's comments on H.R. 1497

Suggested changes for H.R. 1497

WWF strongly supports H.R. 1497 with amended language that would reflect the language in Senator Wyden's Companion bill S.1930, the "Combat Illegal Logging Act". Senator Wyden's bill language, as mentioned by Ms. Wrobleski of International Paper/AF&PA in her testimony, was the result of significant compromise among environmental and industry representatives belonging to a coalition to support H.R. 1497 and S.1930.

Primary changes between H.R. 1497 as introduced and as WWF would recommend be approved by Committee, consistent with S. 1930, are as follows:

Creates same regime for interstate and foreign law by amending 16 U.S.C. 3372(a)(2)(B) instead of adding a new section 3372(a)(2)(C). This measure was taken in order to assure compliance with WTO.

Alters wording of 16 U.S.C. 3372(a)(2)(B)(i). The new clause is tightened in some ways (by eliminating verbs "transported or sold") and expanded in others (by referencing "laws to prevent illegal logging"). The intent has been to provide greater clarity regarding what "laws" are intended. The result is language that, as Ms. Wrobleski stated, is "carefully crafted to protect forests from criminal activity".

Adds "transport and export" to 16 U.S.C. 3372(a)(2)(B)(ii). This captures an important subset of fraud against foreign government that the original wording did not.

Removes the original "documentation" clause (v) from 16 U.S.C. 3372(a) and creates a new section 16 U.S.C. 3372(f) that specifies information that must be declared. This new section, in essence, mandates transparency in timber shipments. It requires specific information and sets a timeframe for compliance, which allays industry fears while at the same time precluding the risk inherent in the original approach, of an indefinite or nonexistent process to promulgate regulations. It also establishes the requirement for a report on implementation success after the first two years, at which point recommendations for alterations to declaration requirements can be made.

Given the careful negotiations between industry and environmental groups and their many members in coming to language that these disparate stakeholders could agree upon, we support amendments to H.R. 1497 that would make it consistent with the language provided in the S. 1930.

Relationship to Lacey Act

WWF firmly believes that amending the Lacey Act is the optimal means for meeting the goal of prohibiting illegal timber products into the U.S. This goal is consistent with the history of the Lacey Act, and the operational provisions of the Lacey Act.

The Lacey Act, first passed in 1900, makes it unlawful to "import, export, transport, sell, receive, acquire, or purchase" fish, wildlife and plants taken in violation of domestic law, and domestic and foreign law where applied to wildlife and fish. H.R. 1497 would expand the Lacey Act such that plant and plant products, like fish and wildlife, would also be subject to relevant foreign laws.

At its inception, the Lacey Act was designed to conserve native wildlife species, particularly those threatened by introduced exotic species and excessive hunting and poaching, facilitated by interstate trade. As with other laws, the Lacey Act has been amended several times over the years to effectively address the evolving scale and scope of the threat to the long-term survival of wildlife, plants and fish. Most significantly, Congress amended the Lacey Act in 1981 in specific response to the substantial increase in the international criminal trade in fish and wildlife.

As case law and history demonstrate, the law was thought to be deficient in meeting the threat so Congress expanded its scope, increased civil and criminal penalties, and introduced strict liability forfeitures and seizures of illegal goods even if the recipient had no knowledge that they were aiding and abetting a crime [1].

As the U.S. Court of Appeals for the 11th Circuit on U.S. v. McNab, Blandford [2] stated:

> The legislative history reflects that "the [main] thrust of Congress's intention in amending the Act was to expand its scope and enhance its deterrence effect." [FN20] 594,464 Pounds of Salmon, 871 F.2d at 828. Indeed, Congress clearly stated that the amendments were meant to strengthen the existing wildlife protection laws and to "provide [the government] the tools needed to effectively control the massive illegal trade in fish, wildlife and plants." 127 Cong. Rec. 17,327 (remarks of Senator Chafee); see also 127 Cong. Rec. 26,537 (1981) (remarks of Representative John Breaux). The Senate Report provided [*1239] that the amendments "would allow the Federal Government to provide more adequate support for the full range of State, foreign and Federal laws that protect wildlife." S.Rep. No. 97-123, at 4. The amendments were intended to "raise both the civil and criminal penalties of the current laws and target commercial violators and international traffickers." 127 Cong. Rec. 17,328 (remarks of Senator Chafee). By strengthening the penalty provisions of the Lacey Act, Congress intended "to give the Federal Government stronger enforcement tools to stop the large-scale importation and taking of fish—which enjoy protection under other foreign—laws." Id. at 17,329 (remarks of Senator James Strom Thurmond).

"Innocent Owner" Provision

WWF does not believe that H.R. 1497 should provide for an "innocent owner" defense. I.e., allow wood products that the U.S. government proves to come from illegal sources (and by doing so proves such products are contraband) from entering the U.S. Some opposed to H.R. 1497 have claimed that the wood supply chain is much more complicated than the fish or wildlife product supply chain and thus the Lacey Act language should be softened to contain an "innocent owner" defense. WWF and TRAFFIC, in their work with fish, wildlife and wood product supply chains, can testify to the fact that, as a function of globalization of commodity markets, all of these supply chains are equally complicated. For example, through its Marine Stewardship Council work, WWF is intimately familiar with helping U.S. seafood retailers to track their fish supply and assure that it is coming from sustainable sources. The seafood industry is highly complex. For processed seafood coming into U.S. it is not uncommon for the primary sources originating from various regions around the globe to be mixed and processed in a different global region, undergo yet additional value-added processing in still another global region and then finally shipped into the U.S. The seafood can be passed through a number of hands, distributors, brokers, and manufacturers, before entering the U.S. marketplace. Despite this complexity, the seafood industry has managed to abide by the Lacey Act, with its existing seizure, forfeiture, civil and criminal penalties, for over 25 years and has even found it useful in protecting its business from unsustainable offshore harvesting of seafood. [3]

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[1] For more information on Lacey case law and history see Robert Anderson, 16 Pub. L.L.R. 27 "The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking, Public Land Law Review and Michele Kuruc "The Lacey Act: Stemming the Flow of Illegally Commercialized, Fish, Wildlife, and Plants", NOAA.

[2] http://www.uniset.ca/other/cs3/331F3d1228.html

[3] http://www.alaskajournal.com/stories/091006/hom__20060910060.shtml

As has already been mentioned in this testimony, the 1981 Amendment of the Lacey Act intentionally added the seizure and forfeiture on strict liability, and increased penalties, in order to make the Lacey Act effective in addressing the issue it was designed to address: threat to the conservation of fish, wildlife and plants as a result of illegal activity. As is often said with respect to the Lacey Act, one of its greatest strengths is its deterrence effect. Any softening of the language, such as the inclusion of an "innocent owner" protection of contraband goods, would render the law ineffective in this regard.

In United States v. 144,774 Pounds of Blue King Crab ((410 F.3d 1131, 9th Circuit 2005), the 9th Circuit held that the innocent owner provision in the the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) is not inconsistent with, or contrary to, the Lacey Act. In that case, the U.S. sought forfeiture under Lacey of frozen blue king crab taken in violation of Russian Federation law. Respondents raised the "innocent owner" defense under CAFRA, claiming that because they did not know the crab was caught in violation of Russian law they should be exempt from forfeiture. Despite the complexity of the king crab supply chain, the 9th Circuit Court, based on Lacey Act law, history and congressional intent, deemed the products to be unlawful, though not criminal, and thus subject to forfeiture, a tool deemed by the Court to strengthen the effectiveness of the Lacey Act.

In terms of general enforcement of the Lacey Act, apart from criminal cases, the government must have a preponderance of evidence in order to establish a case. The investigative procedures to make such cases are exhaustive, as described by Paul Ortiz of NOAA.[4] In proving a Lacey violation, U.S. prosecutors will go to great lengths to confirm that a foreign law has been violated, and will work closely with foreign government officials to determine the relevant laws and to ascertain whether there were any violations. They will often bring in translations of laws, expert witnesses from the foreign country, and other evidence to prove a violation. WWF expects that the same steps would be taken in enforcement of an alleged Lacey Act violation regarding timber products.

In summary, the fish and wildlife supply chains that the Lacey Act currently governs are just as complicated as the wood supply chains that we would like to include under Lacey, so there is no need to redress the Lacey Act in order to make it "fit" the wood product situation. The Lacey Act 1981 Amendments strengthened enforcement measures and penalties, including adding a strict liability clause, in order to make Lacey more effective in meeting the ever-increasing global threat perpetrated by the illegal fish and wildlife trade. Lacey Act case law demonstrates that it is designed to, first and foremost, capture and punish those who are knowingly complicit in illegal wildlife and fish trade. Secondarily, Lacey establishes some measure of accountability by exercising an appropriate level of due care. Lacey puts the burden of proof on the government to establish culpability and rewards those who are already practicing appropriate due diligence relative to their risk of procuring illegal products by evening the playing field in terms of punishing their less scrupulous competitors.

6. Implementation of H.R. 1497

WWF firmly believes that, through a risk-assessment based approach, it is possible to distinguish wood that has a high probability of coming from illegal sources within one's forest products. Using existing tools, technologies and resources already adopted by several industry leaders, it is possible to work with one's suppliers to eliminate illegal wood, even within long and complicated supply chains. WWF, through its Global Forest & Trade Network, collaborates with retailers, importers, factories, distributors, brokers, suppliers, and forest managers throughout their global supply chains to identify and address illegal wood in the system. Given over a decade of experience helping companies on this issue, we can attest to the fact that it is possible to assess risk for illegal wood within forest products of all product category types and it is possible to take appropriate actions with suppliers to minimize and mitigate the risk.

In our experience, the first step in assessing risk level is to know the species and country and forest management unit origin of wood for a given product. Having worked with many wood product buyers and retailers, we can safely say that even the most well-intentioned companies do not necessarily know the origin of wood for their products beyond knowing the physical location of their primary and direct suppliers such as factories in China or brokers in Singapore. Foreign factories and brokers often resist providing their customers with wood origin information because they either lack systems to track their wood or they are protecting what they consider to be a competitive trade secret. Unfortunately, without knowing where, geo-

[4] http://www.high-seas.org/docs/Lacey__Act__Paper.pdf

graphically, wood originates, it is virtually impossible to assess and address risk of illegal wood within one's supply chain. Those who are committed to knowing the origin of wood to identify risk must often expend excessive time and resources simply getting information needed to identify any red flags. Their less diligent competitors actually save time and resources by conducting "business as usual."

The proposed Lacey Act amendment would require shipments of forest products to be accompanied by a declaration stating the species, country of origin for the raw material, quantity and measure, and value. The documentation requirement should help law enforcement agents and, more importantly, the wood product buyers, to identify relative risk of imports for illegal wood, which vary country by country, in order to prioritize their efforts. The requirement should also serve to motivate factories, brokers, distributors and others importing into the United States to establish wood traceability within their procurement programs. Wood traceability through the complicated global supply chain is possible if the foreign factories and their suppliers put systems in place to capture needed information. WWF has in fact worked with many factories within China, Southeast Asia and Latin America to put these tracking systems in place so we can attest to the fact that it can indeed be done. The problem is that without significant demand for this information, the factories will not change their current practices.

Moving from the current voluntary data exchange model to a mandatory documentation model would greatly benefit U.S. companies who are making every effort today to procure wood responsibly from the hassle of trying to persuade their suppliers to provide critical supply chain information on which to base their risk assessments. Increasing supply chain transparency in this manner would also help to shine a light on the less scrupulous wood buyers and, again, even the playing field.

Once transparency is established, there are a multiple tools that one may use to assess and address risk (see Appendix A for more information). As mentioned previously, chain-of-custody certification, controlled wood certification, legality verification, first and 2nd party random supplier audits, Radio Frequency Identification (RFID) tags and genetic testing to verify log origin, remote-sensing, and stepwise programs like Rainforest Alliance's Smartsource Program and the Tropical Forest Trust program are all viable methods of minimizing and mitigating illegal wood risk and are all being used effectively within the forest products sector by market leaders who have actually integrated legality checks into their routine quality assurance programs. In fact, and as an interesting aside, American Forest & Paper Association (AF&PA) members, who support H.R. 1497, voluntarily instituted programs to assess and address illegal wood within their supply chains in 2002, as part of the Sustainable Forestry Initiative. As AF&PA includes several companies who import wood products from high risk regions, this is not a trivial matter. The fact that this association has proactively met the illegal logging issue with appropriate due care may in part explain their confidence in and support for H.R. 1497.

While some forest product companies and associations recognize that their level of due care must match the level of risk within their business, others unfortunately do not. This is particularly disconcerting when considering that the odds of sourcing illegal wood products are 2:5 from China, 4:5 from Indonesia, 1:5 from Malaysia, 3:5 from Honduras, 2:5 from Vietnam, and 2:5 from Peru, all countries exporting large volumes of wood products to the U.S. With such high odds of sourcing illegal wood, it is puzzling to us that more companies and associations are not raising their level of due care to be commensurate with their level of risk. While several companies and associations have codes of conduct and publicize high-level statements against illegal logging, they are not taking appropriate measure to implement these policies across the board, and unfortunately have a competitive advantage over those companies that are practicing appropriate due care. Indeed, if all market players were using the same voluntary and abundant due diligence mechanisms available to exclude illegal wood from their supply chains, then amending the Lacey Act would become unnecessary.

The current importing of suspicious wood products into the U.S. is not only damaging the U.S. forest products industry and the social, economic and environmental situation of many developing countries, but it is also harming the American consumer who is in fact the end user of these products. Consumers have a right to trust that the products they buy, if not necessarily sustainable, are at the very least sourced legally. Consumers, unlike the forest product industry, have few ways of distinguishing between legally and illegally sourced products and they should not be put in this position anyway. We believe that the U.S. government, in partnership with exporting nations and the global forest products industry, has a responsibility to the American consumer to screen out unlawful products from the U.S. retail shelf.

7. Conclusion

Congressional approval and enactment of this legislation, with amendments suggested in this testimony, would place the United States in a strong leadership role in addressing the illegal timber trade. Given the serious environmental and social impacts of illegal logging to developing and transitional economies, and the economic impacts to the global forest products industry, it is critical that actions be taken by both individual companies and governments to address the problem. Although public-private partnerships and multiple supply-side measures have shown promising results, we cannot expect these actions to significantly abate illegal logging without being accompanied by strong demand-side signals. Several companies have voluntarily undertaken steps to exclude illegal wood from their supply chain. However, market penetration of these voluntary and sometimes costly efforts is not deep or broad enough to keep up with the rapid pace of illegal logging and deforestation. Industry-wide actions are needed to really transform the marketplace.

H.R. 1497, amending the Lacey Act to address illegal timber imports, provides an effective and business-friendly tool for enabling the U.S. government to punish criminal actors, encourage a credible level of due diligence among all U.S. forest products industry, and drive foreign suppliers to put systems in place that would enable them to trace their wood to forests of origin. Knowing where the wood originates is the first step in assessing and addressing risk of illegal wood within a given supply chain. Amending the Lacey Act should help level the playing field for responsible U.S. businesses and remove the perverse incentives that currently exist for wood procurement that causes irreparable social, economic and environmental harm.

Finally, along with the passage of H.R. 1497, we ask Congress to provide sufficient appropriations to the agencies tasked with implementing this critical legislation. The key to whether this law succeeds on the ground is whether adequate personnel, training and 6funding are dedicated to enforcement efforts.

Thank you for the opportunity to provide this testimony to the Subcommittee.

Some Tools and Resources for Companies to Address Illegal Logging in Their Supply Chains [5]

- Voluntary legality verification See http://www.rainforest-alliance.org/programs/forestry/smartwood/legal_verification.html for an example.
- Keep It Legal Guidelines— http://assets.panda.org/downloads/keep_it_legal_final_no_fsc.pdf.
- FSC Controlled Wood Certification — http://www.fsc.org/controlled_wood
- FSC Chain of Custody Certification — http://www.fsc.org/keepout/ en/content_areas/77/134/files/FSC_STD_ 40_004_V1_0_EN_CoC_ for_Suppliers_and_Manufacturers.pdf
- Other 3rd Party forest chain of custody certifications
- First and second party supplier audit systems—for a few real-life examples see:
  - http://w3.upm-kymmene.com/for/internet/ upm_ tracing_russia_wood.nsf/start
  - http://search.storaenso.com/mini/woodprocurement/main.html
- Stepwise Programs to Identify and Eliminate Illegal Wood in Supply Chain:
  - WWF-GFTN — http://www.panda.org/about_wwf/what_we_do/forests/our_solutions/responsible_forestry/gftn/index.cfm — includes Risk Assessor database tool which cross-references country and species and rates relative risk of illegal logging
  - Rainforest Alliance—Smartsource and Smartstep — http:// www.rainforest-alliance.org/programs/forestry/trees/services/ smartsource.html
  - Tropical Forest Trust—Third party verification — http://www.tropical foresttrust.com/third-party.php
- Helveta and TFT Tracelite RFID tracking — http://www.tropicalforesttrust.com/tracelite.php
- Remote sensing — http://www.illegal- logging.info/item_single.php?item=news&item_id=1819&approach_id=1

[5] The tools and resources listed here are in no way exhaustive or comprehensive. We recommend that Department of Justice convene a multi-stakeholder working group to develop a comprehensive list of available resources