

**WRITTEN TESTIMONY OF
WORLD WILDLIFE FUND &
TRAFFIC**

**ON
H.R. 1497, A BILL TO AMEND THE LACEY ACT AMENDMENTS OF 1981 TO
EXTEND ITS PROTECTION TO PLANTS ILLEGALLY HARVESTED OUTSIDE
OF THE UNITED STATES**

**FOR THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
U.S. HOUSE OF REPRESENTATIVES**

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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 HR 1497; (2) background on the illegal timber trade; (3) current efforts to address illegal timber trade; (4) the importance of HR 1497; (5) WWF's comments on HR 1497; and (6) implementation of HR 1497; and (7) a conclusion.

1. WWF Interest in HR 1497

WWF's interest in HR 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 big-leaf 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 socially 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 US \$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 US 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 HR 1497

Suggested changes for HR 1497

WWF strongly supports HR 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. Wroblewski 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 HR 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. Wroblewski 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 crime¹.

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 HR 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

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>

doing so proves such products are contraband) from entering the U.S. Some opposed to HR 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

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

³ http://www.alaskajournal.com/stories/091006/hom_20060910060.shtml

⁴ http://www.high-seas.org/docs/Lacey_Act_Paper.pdf

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. Secondly, 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 HR 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, geographically, 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 step-wise programs like Rainforest Alliance's Smartsources 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 funding 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 Chains⁵

- 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.tropicalforesttrust.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

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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