



environmental **investigation** agency

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Environmental Investigation Agency
P.O. Box 53343
Washington, DC 20009 USA
www.eia-global.org

APHIS-2008-0119
Regulatory Analysis and Development
PPD, APHIS
Station 3A-03.8
4700 River Road Unit 118
Riverdale, MD 20737-1238

**Comments regarding the Lacey Act amendments (section 8204 of the Food,
Conservation and Energy Act of 2008), Federal Register Docket APHIS-2010-
0093**

The Environmental Investigation Agency (EIA) appreciates the opportunity to comment on the September 29, 2010 Federal Register notice regarding the amendments to the US Lacey Act, with particular regard to implementation of the declaration. We believe this is a critical piece of the legislation and remain committed to working with government, industry and NGOs to explore ways that the declaration continues to support legality as well as the scientific and environmental integrity of the law without unduly burdening business. We have collaborated with leading industry sectors and environmental groups on a set of consensus recommendations to improve upon the data collection and implementation of the declaration. We have attached this consensus statement to the current submission for your information and use. In addition, we seek to address the specific issues of interest in the Federal Register notice below.

The collection of scientific name, country of harvest, value, and volume is important and necessary for curbing the trade in illegal wood and has other practical utility.

The declarations can serve at least three important purposes.

1. Strengthening the enforcement abilities of the implementing agencies. The declarations assist with risk analysis for inspections and investigations by enabling agencies to examine patterns, compare declarations to manifests, other trade data or CITES permits, understand which ports might be priorities, and better understand to which species and or countries to pay attention, thereby aiding enforcement activities. The declarations contain

information that can also support investigations that originate from other sources, and allow investigators to pinpoint individual shipments of interest.

For example, on June 9, 2009, agents of the U.S. Fish & Wildlife Service in Tampa, Florida seized three pallets of wood valued at \$7,150 as they entered the Port of Tampa, Florida from Iquitos, Peru. The shipment contained some thirteen species of tropical wood, including tigrillo (*Swartzia arborescens*), palisangre (*Brosimum rubescens*), and Tigre caspi (*Zygia cataractae*). Agents were provided information that the shipment was being imported with stolen and forged documents. In this case, some of the alleged violations of Peruvian law may have included operating a business without a permit and a violation of using stolen and forged documents.

Supplier country laws had been violated, yet it was the violation of the declaration requirement of the Lacey Act that prompted agents to inspect and confiscate the wood. The agents confiscated the wood upon discovering that it had been misdeclared as a "finished wood product" under HTS code 4421. On the declaration form, the buyer's import broker classified the three pallets as containing finished wood products when, in fact, the pallets contained raw wood. This incorrect classification enabled the importer to avoid having to fill out more detail about the shipment since, at the time, full declarations for finished wood products had not been phased in. The importer could have taken additional steps in order to fully exercise 'due care' under the Lacey Act. The claimant used an import brokerage firm in order to complete the shipment of the tropical hardwood from Peru, which is not uncommon for filing Lacey Act declarations. As the importer did not take all necessary steps to ensure that the products were properly declared, the Office of the Solicitor upheld the forfeiture.

2. Augmenting trade data to support policy making. The declaration data is useful in furthering understanding of where US imports are actually originating and therefore what forest regions are impacted by US consumption. This can support more targeted interventions in support of bilateral aid priorities, bilateral and multilateral trade relationships (i.e. Free Trade Agreements, MOUs on Illegal logging and Associated Trade with China and Indonesia, the Asia Regional Dialogue on Illegal Logging and Associated Trade, the Transpacific Partnership and the Stop Burmese JADE Act), and US climate strategy including REDD negotiations.
3. Increasing transparency in supply chains. The requirement to ask even basic questions about species and country of harvest encourages collection of several facts fundamental for a company trying to reduce risk of illegality and thereby exercise 'due care.' The increased level of questioning in a previously unregulated global market establishes a new level of transparency in business practices, and furthers the underlying purpose of the Lacey Act.

Our ongoing experience and interactions with people in the forest products industry both within the United States and abroad suggests ever more strongly that the declaration requirement is a critical element for achieving the intent of the broader

Lacey Act¹. On-the-ground evidence confirms that those sectors such as flooring and sawn timber that are subject to the declaration are far more aware of the requirements and consequences of the statute. This reinforces our strong belief that, although there is need for improvements in the quality of the data collected in some cases and the government's overall ability to process it, the declaration is already doing much of what it was designed to do: encouraging companies to ask necessary questions, to clarify and simplify their supply chains, and to create transparency in markets and trade flows that were largely unregulated in the past. In fact, we have heard from some companies that at this early stage in Lacey Act enforcement, it is the declaration requirement, even more than the underlying prohibition that will push them to take concrete actions to improve monitoring of their supply chains.

The estimate of the burden of the information collection for the declaration seems high, and information is lacking to provide concrete feedback on methodology. ✓

We are unclear as to the methodology and assumptions that were used to establish the estimated burden of the declaration requirement. We request information as to how these figures were reached. In the absence of this greater detail, we anticipate that the numbers should decrease significantly as each company and its supply chain grows accustomed to completing the declarations. That said, we also believe that even an average of as much as 8 hours per declaration, assuming that this includes all that is entailed in exercising due care, is a legitimate investment of time to ensure that plant and timber sourcing is legal.

We would also like to provide some feedback from a recent survey conducted by the Forest Legality Alliance (FLA). The World Resources Institute (WRI) and EIA launched the FLA in May 2010 with support from the U.S. Agency for International Development (USAID) and private donors. The Alliance is an international, multi-stakeholder initiative designed to achieve better forest governance, sustainable management of forests and biodiversity conservation by reducing the demand generated by global market pressures for illegally harvested forest products, increasing transparency in forest product supply chains, and supporting supply chain efforts to deliver legal wood and paper. As part of this work, the FLA contracted an independent firm to conduct a survey in 2010² to determine, among other things, the degree to which the Lacey Act is changing how companies do business, whether it is considered a burden, and if so, if it is the *underlying prohibition* or the *declaration requirement* that is causing difficulty. The survey was comprised of two major components: a series of hour-long one-on-one interviews with key industry leaders, and an online questionnaire that was distributed broadly to association members and businesses both in the US and other supplier countries. The results indicated strongly that it is not the declaration (i.e. the "paperwork") that is causing concern for individuals and companies, but rather how to exercise "due care".

¹ See footage of interviews in a recent video, "Two Years in the Making: How the Lacey Act is Changing the Global Timber Trade," available at www.eia-global.org/lacey and directly at <http://www.youtube.com/watch?v=s0gX5mwVBMU>.

² Findings from interviews and survey for the Forest Legality Alliance. Bernuth & Williamson. 2010. To view complete results, please contact Anne Middleton anne@eia-international.org.

As mentioned above, the Federal Register notice did not specify whether or not the published estimate of burden includes actually *finding* the information that is then entered into the declaration (such as scientific name and country of harvest) or whether the estimate simply quantifies the time it takes to physically fill in the declaration form. Understanding the country of harvest and the species name of a wood product is fundamental to practicing due care as per the underlying prohibition in the statute. Our research and frequent communications with industry members lead us to believe that if a company is exercising adequate due care, then the declaration form should not generally be difficult or time consuming. There will be, of course, exceptions, but this premise is reinforced by the survey results. The independent survey conductors pulled out a set of quotes that is representative of the sample size and listed below.

"For our customers, yes, there is a lot of paperwork to fill out...but as time goes on, you'll get a spreadsheet, and fill out the names and numbers and...it is just repetition."

"Like with OSHA where when something first comes out we all think we are going to die, but then once you've done it a couple of times you realize it isn't that bad."

"Border papers are pretty simple--just says what you're bringing in so it can be tracked. The most difficult part is defining what due care is."

"There are two things. There is filling out the form, the declaration, which is simple, but then there is showing due care, and there is no real guidance for that."

The implementing agencies should work to minimize the burden of the information collection on those who are required to respond, through use of automated, electronic, mechanical and other collection technologies, e.g. allowing for no-cost electronic submission of responses.

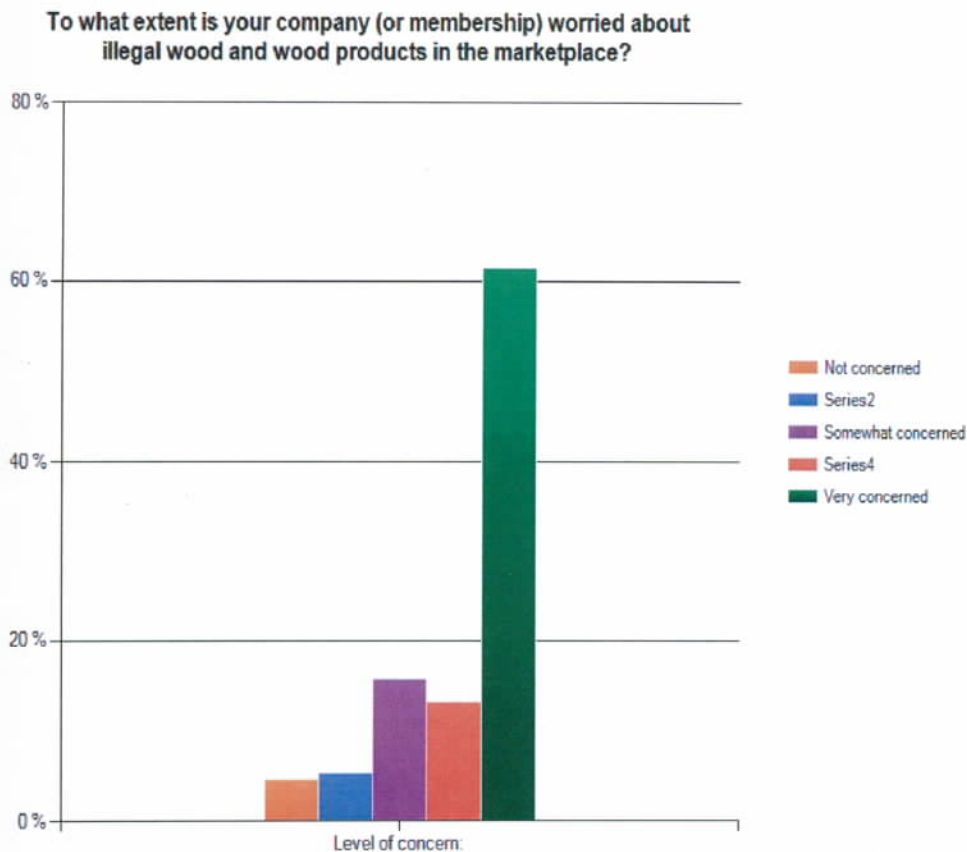
We urge the federal government to commit funding to USDA-APHIS to build a unified electronic declarations database and to add internal capacity to perform data analysis needed for monitoring and enforcement purposes. Strong enforcement of the Lacey Act coupled with an electronic database would bring about the broader intent of the law including a multitude of environmental, social and economic benefits to the U.S. and global markets.

Final Thoughts and Survey Results

A strong Lacey Act would level the playing field for responsible manufacturers, particularly in the U.S., supporting the many jobs the U.S. forestry products industry provides. Eliminating illegally sourced wood products in U.S. markets also promotes more responsible harvest and trade practices in other importing countries - **Australia is keeping an eye on U.S. leadership on this critical issue as they contemplate similar actions, and the EU just joined the U.S. by passing a strict ban on trade in illegal wood in July 2010.** A recent report by the London-based

think tank Chatham House (July 2010)³ finds that demand side measures, such as the Lacey Act and the European Union's Forest Law Enforcement, Governance and Trade (FLEGT) process are critical elements to an estimated 25% reduction in illegal logging globally since 2002. The market signals sent by such legislation serve to reinforce improvement in governance and enforcement on the ground. This reduction in illegal logging has also been estimated to have averted between 1.2 billion and 14.6 billion tons of CO₂ emissions.

Survey⁴ results suggest that illegal logging is still a problem for companies worldwide and that awareness of the Lacey Act is high, and has been moving up along the supply chain from suppliers to retailers.



"This issue of illegal imports into the US...it is a daily deal."

"Three years ago, only a few companies were concerned about (illegal logging). And now every company that is serious about exporting to the US and EU is."

"There is a real wave of interest right now...even in places like the Central African Republic, we are hearing that there is a change in behavior."

³ Chatham House. "Illegal Logging and Related Trade: A Global Response", prepared by S. Lawson and L. McFaul, 2010.

⁴ Findings from interviews and survey for the Forest Legality Alliance. Bernuth & Williamson. 2010.

"It is on the radar, and an issue we as a company think is important."

"On a scale of 1 – 10, I would say that (our members' concern is at) 8 or 9, as with a high percentage of the wood coming in illegally, it means they just can't compete."

"Illegal wood is killing (my company)...but it is getting better."

Committing to the implementation and enforcement of the Lacey Act is one of the most cost effective actions available to save the world's forests, support American jobs, ensure that developing countries benefit from the full economic value of any natural resource extraction decisions, and reduce global greenhouse gas emissions. Making the Lacey Act work will require a modest investment but will yield a massive return. EIA is committed to the ongoing facilitation of this process.

Attachments:

Second Consensus statement

Forest Legality Alliance Survey Memo