

Testimony 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  
U.S. House of Representatives Committee on Natural Resources  
Subcommittee on Fisheries, Wildlife, and Oceans  
Legislative Hearing on H.R. 1497  
October 16, 2007

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 transporting 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 (11<sup>th</sup> 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 (5<sup>th</sup> 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. Clearly, 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 (9<sup>th</sup> 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 statutes 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.