

WORLD GROWTH

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Green Protectionism and the Lacey Act

*Submission to the US Department of Agriculture, Animal
and Plant Health Inspection Service's (APHIS) Review of
the Implementation of Revised Lacey Act Provisions,
Docket No. APHIS-2008-0119*



WORLD GROWTH



The World Growth Forestry and Poverty Project

Forestry for Sustainable Development

Sustainable forestry and the development of sustainable forest plantations are the basis of a path to sustainable development that is both practical and achievable, particularly in developing countries.

Forestry for Climate Change Mitigation

The expansion of sustainable forestry and forest areas is a low-cost means of climate change mitigation for developing countries that does not threaten economic growth.

Forestry for Reducing Poverty

The expansion of sustainable forestry — from small-scale community harvesting to large-scale forest and plantation management — is a means to large-scale economic growth in developing countries, thereby reducing poverty and supporting livelihoods.

Forestry for Equity

The expansion of sustainable forestry for climate change mitigation and poverty reduction must be treated equally between nations, and must not be used as a tool for implementing political objectives that will threaten economic growth.

The US Lacey Act is heavy-handed in its approach. Regulatory intervention under the Act is justified under the presumption that high levels of illegally sourced wood products are entering the US market. In reality, this is not the case.

This view has been propagated by a political campaign aimed to protect uncompetitive industry. Impartial assessment of the issues is needed before the US Government considers widening the scope of these amendments. The limited assessments that so far have been undertaken show that global trade in illegal logging is largely insignificant. More so, it is declining.

Yet despite its faltering rationale, recent amendments to the Act have extended its regulatory powers. Some industry groups have lobbied for the inclusion of composite wood products — such as pulp and paper — under these amended requirements. The technical difficulties and significant costs of including composite products greatly outweigh the risk of illegal sources entering the US through these products.

Executive Summary

The US Lacey act was amended in 2008 to expand regulatory powers over additional wood products. Some lobby groups have pushed for products such as pulp and paper to be phased into the amended declaration requirements.

The US Department of Agriculture's Animal Plant Health Inspection Service (APHIS) is currently reviewing the amendments requiring import declarations on imported products. APHIS must recognise that a deliberate campaign — run under the auspices of environmental concern — has pushed for pulp and paper products to be included under these requirements. The campaign is an attempt by industry and union interests to maintain their uncompetitive paper industries through 'green' protectionism.

These interests aim to corrupt the Lacey Act by using it as a tool to limit imports of cheaper paper products from competitive industries. The US Government must ensure that the Lacey Act remains true to its intention; to regulate illegal trade in wildlife and plants — not protect local industry.

The highly processed nature of paper products means adding declaration requirements to imported paper products would incur significant costs. Paper is a composite product. There are many instances where its composites cannot be easily or effectively identified. This does not make it a *priori* illegal.

Research shows that illegal logging is not as significant as lobbyists have claimed. Scholarly understanding of the global

rates of illegal logging is remarkably lacking. That which we do have, shows rates of illegal logging are in fact declining. All indicators point to the conclusion that illegal logging is largely a non-issue.

Including paper products in declaration requirements would achieve no measurable environmental benefits. Rather it would serve to strengthen North American industry at the expense of those living in developing countries.

The US is being lobbied to introduce costly regulation that has significant consequences for developing nations. The US Government has an obligation to gain a clear assessment of the rates of illegal logging before granting the legislation further extension.

Proportionality is the key to sound regulation. But in the case of the Lacey act, heavy handed legislation acts without clear understanding of the implementation costs and regulatory necessity. Legislation should be proportional to the likelihood of illegal product being imported and the incurred costs of restricting importation. A cost benefit assessment for Lacey Act's regulatory impact should be undertaken before its powers are further extended.

Against such a backdrop, World Growth recommends:

- That pulp and paper products are not included in future phase in plans for products regulated by the Lacey Act. This is supported by the high costs and tech-

nical difficulties involved in declaring composite paper products, and the low likelihood of these products containing illegally sourced components.

- In the event that pulp and paper product imports are phased in, they should be harmonised with other import regulations such as common trade groupings; *de minimis* exceptions; and extended designations for reused/reclaimed materials.
- That the US Government prepare detailed cost-benefit assessments to study the impact of Lacey Act regulation on wood products. This assessment should include both a detailed analysis of the global rates of deforestation using impartial contemporary data, an assessment of the risks that such products enter the US market, and the costs involved in implementing the legislation.

The Lacey Act

The Lacey Act was first signed into United States law in 1900, and provides the basis of US legislation dealing with trade in prohibited plant and wildlife. The Act aims to combat illegal trafficking in wildlife, fish, and plants by creating penalties for violations.

The Act was most recently amended in 2008 under the US Farm Bill (the Food, Conservation, and Energy Act of 2008). These amendments:

- Expanded the Act's protection to a broader range of plants and plant products including paper, lumber and furniture. They prohibit trade of any wood product in the US that is logged or traded in violation of a law in the country of harvest.
- Made it unlawful to import plants and plant products without an import declaration. The declaration requirements oblige any US purchaser to demonstrate it has established that wood products or product containing

fibre has been checked to ensure no illegal species is included. Import declarations require detailed information about the product, including the country of harvest, the genus and species of the plant, as well as the product's volume and value.

- Establish penalties for violations, including fines of up to \$500,000, forfeiture of goods and vessels, and incarceration of up to five years.

The amendments also instituted a review of the implementation of the revised provisions within two years of its introduction. The review - undertaken by APHIS - will inform a final report presented to US Congress. APHIS have called for public submissions. World Growth has identified a number of areas of concern with the Lacey Act amendments that need to be brought to the attention of the APHIS, the US Congress, and the general public.

'Proportionality' in the Development of Sound Regulation

The Lacey Act mistakenly presumes high global level of illegal logging and related trade. But research is increasingly indicating this is not the case.

The definitive assessment on illegal logging — a study produced by consultants Seneca Creek and commissioned by the American Forest Product Association (AFPA) — suffers from a number of limitations. This study has served as the underpinning assessment to justify regulating trade in illegally logged timber in several countries, including the US, EU and Australia.

The Seneca Creek study still serves as the basis for almost all global assessments of illegal logging, despite its significant flaws. The report is now over seven years old; many of the data sources are over a decade old. Many of these data sources are neither impartial nor scientific, but rather have an environmental campaign basis. Furthermore, Seneca Creek employ a case study based methodology, but fail to use other methodologies that have been effective in analysing smuggled products.

These limitations lead the study's authors to openly admit that much of their research is "more art than science". Yet Seneca Creek remains the benchmark assessment of illegal logging. Despite its obvious flaws — and the limitations recognised by its own authors — the data, methodology and assumptions behind Seneca Creek have not been critically assessed.

Notwithstanding our insufficient understanding of the phenomenon, the contemporary research that has been undertaken indicates that global rates of illegal logging are declining. Chatham House, a respected UK research institute, has found global illegal logging is declining. The reasons for this are hereto unclear: it may be as a result of poverty reduction, economic growth and increasing affluence in a number of tropical forested countries; improved enforcement measures to reduce illegal trade; and/or more accurate assessments of forest resources and forest monitoring as a result of recent advancements in remote sensor technology. Alternatively, there is a high likelihood that the initial benchmark data used by Seneca Creek was initially inaccurate. Either way, emerging research indicates that illegal logging is a non-issue.

This is the conclusion drawn by an Australian Government commissioned report investigating the impact of restricting trade of illegally logged timber entering Australia. They found that "Australia's imports account for about 0.034 per cent of global timber production, and 0.34 per cent of products incorporating illegally logged timber." The report concluded that trade restrictions would be ineffective and expensive, and largely unnecessary.

In order to develop sound regulation and policy, World Growth recommends that the US Government undertake a comprehensive assessment into global rates of illegal logging before pursuing regulation to further restrict imports of processed wood products such as pulp and paper. This assessment should identify the risk of illegal wood products entering US markets; weighted against the costs of implementing regulatory options.

The Lacey Act and Composite Products

Currently declaration requirements under the Lacey Act do not apply to paper. The original Lacey Act phase in schedule included pulp and paper products, however this was removed from the revised phase-in schedule published in 2009.

The USDA should maintain the status quo - any requirement to declare information regarding the composite products found within paper is naïve. The technical difficulty and high costs required to effectively identify the composites of paper make it difficult to fulfill amended declaration requirements.

At the same time, there is a low likelihood that that paper imports into the US have significant illegal components. Most illegally logged timber is consumed in domestic markets through the informal economy, with only a very small proportion of illegal sources entering international trade. Furthermore, illegal species are often banned, and as such receive premium prices on black markets. The price mechanism decreases the likelihood of illegal species entering relatively low value processed products such as paper.

However, if APHIS were to phase-in pulp products to conform to Lacey Act requirements, special rules should be provided for the designation of composite products where the constituent products are reasonably indeterminable. These uniform designations, some of which are highlighted below, also serve to highlight the difficulties of including paper products under the Lacey Act declaration requirements.

- ***Reused/reclaimed material*** - Mixed Wood Residue (MWR) refers to wood pulp produced from mixed wood sources. The high variety of species often makes it difficult to identify the composite sources, making declaration problematic. The use of MWR does not imply illegality; on the contrary in many countries the use of MWR is in line with national forest regulation. In Indonesia for example the use of MWR is required when developing land for sustainable plantation forests. Chemically, MWR are similar to other compos-

ite materials such as particle board and reused materials. Should paper be phased-in, it would therefore be necessary that APHIS add a composite material designation for MWR or ensure that importers can designate MWR as a reused/reclaimed material.

- **Common Trade Groupings** - Sustainable plantation forests in tropical countries are principally based on acacia and eucalyptus species. It is usually possible to identify the sources where pulp is produced from plantations. However, determining the ratio of species composition is problematic. APHIS has addressed this problem by issuing guidance for the Usage of Common Trade Groupings. Under this guidance document, importers can use a Common Trade Grouping to designate shipments containing a number of distinct species. For example, lumber produced from spruce, pine, and fir species is marketed together as SPF. It is necessary that APHIS allow for similar grouped import declarations in the event that pulp and paper are phased into the import declaration requirements.
- **De minimis exemptions** - The 2008 amendments to the Lacey Act outline provisions for *de minimis* exemptions – exemption of products that have only a very small likelihood or percentage of ‘illegal’ component. In regards to identifying plant materials in pulp and paper manufacturing, it is often possible to identify 95 per cent of product with relative ease while the remaining 5 per cent can require extraordinary effort. The De Minimis exception reduces the significant cost of implementing declaration requirements, without meaningfully reducing the effect of the Act. Due to the complexity of source identification in paper, it is necessary that these exceptions apply to paper if it is to be phased into the Lacey Act requirements.
- **Non-wood organic composites** - Significant non-wood organic products are often used in paper production. For example, coated paper typically uses a number of

non-wood composites such as binder which can make up to 15 per cent of the weight of coated paper. Similarly, paper often contains significant amounts of organic chemicals such as sizing agent, Alkyl ketene dimmer. Identifying non-wood component in paper — such as binder and sizing agents — is costly and has no bearing on the products legality. Thus, in the event where paper components must be identified, the definition of paper must refer to plant-based fibre component rather than chemical fillers, binders and other organic non-wood inputs.

The Campaign against Imported Paper

Union and industry groups have teamed up with environmentalists to lobby for the inclusion of paper in the Lacey Act. Their objections may appear to be environmental, but are little more than an attempt to salvage uncompetitive North American producers and the expense of the world’s poor.

For example the BlueGreen Alliance — a coalition between the United Steel Workers (USW) and a number of environmental campaign groups including Rainforest Action Network, Natural Resources Defence Council and the Sierra Club — has been petitioning for the inclusion of paper products in the Lacey Act.

While their argument appears to be based on environmental concern, it has more to do with trade protectionism. The alliance includes union groups whose interests are preserving uncompetitive industry. The costs of this are significant — both to the end consumer and the development of emerging economies.

In 2010, the organisation released a report raising claims of rampant illegal logging in Indonesia. The intention was clearly to discredit the legality of Indonesian timber exports in order to influence policy makers to restrict their entry into North American markets.

The Indonesian forestry industry operates responsibly. Mandatory national legality requirements are being devel-

oped and phased in. There have been issues with illegality in the Indonesian forestry sector, although evidence suggests this is mostly a result of subsistence farmers clearing land for the agricultural production. It is unlikely that illegal timber makes its way into the major Indonesian paper producers due to their strong procurement policies and commitment to legality in chain of custody.

Furthermore Indonesian paper exports to the US are relatively small. Meanwhile there is evidence to suggest Indonesia has experienced decreasing levels of illegal logging, as well as an overall improvement in forest management indicated by declining rates of deforestation. Yet US protectionist interests continue to attack the Indonesian pulp and paper industry simply for outperforming North American producers.

These proponents of protectionism argue that the competitive advantage developing countries have over the US in producing pulp and paper needs to be artificially curbed by imposing 'green' restrictions. World Growth has shown their dubious claims to be quite transparent. The campaign ultimately serves to benefit less competitive producers in the US; meanwhile restricting the economic growth of those living in developing countries.



World Growth is a non-profit, non-governmental organization established to expand the research, information, advocacy, and other resources to improve the economic conditions and living standards in developing and transitional countries. At World Growth, we embrace the age of globalization and the power of free trade to eradicate poverty and create jobs and opportunities. World Growth supports the production of palm oil and the use of forestry as a means to promote economic growth, reduce poverty and mitigate greenhouse gas emissions. World Growth believes a robust cultivation of palm oil and forestry provides an effective means of environmental stewardship that can serve as the catalyst for increasing social and economic development. For more information on World Growth, visit www.worldgrowth.org.

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