

**Donna Harman
President and Chief Executive Officer
American Forest & Paper Association**

Written Testimony on

Hearing on H.R. 3210, the Retailers and Entertainers Lacey Implementation and Enforcement Fairness (RELIEF) Act and H.R. 4171, the Freedom from Over-Criminalization and Unjust Seizures Act (FOCUS) Act of 2012.

**U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs**

May 8, 2012

I appreciate this opportunity to present the views of the American Forest and Paper Association (AF&PA) and its members regarding H.R. 3210, the Retailers and Entertainers Lacey Implementation & Enforcement Fairness (RELIEF) Act and H.R. 4171, the Freedom from Over-Criminalization and Unjust Seizures Act (FOCUS) Act of 2012.

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging, and wood products manufacturers and forest landowners. Our companies make products essential for everyday life from renewable and recyclable resources that sustain the environment. The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP. Industry companies produce about \$190 billion in products annually and employ nearly 900,000 men and women, exceeding employment levels in the automotive, chemicals, and plastics industries. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 47 states.

The U.S. forest products industry is a strong proponent of sustainable forest management practices in the U.S. and around the world and is committed to using forest management and manufacturing practices that meet environmental, social, and economic objectives. Our customers rely on us as the foundation of their supply chain to ensure that the products we sell are produced in a legal and sustainable manner.

Building on its legacy of sustainability, the U.S. forest products industry last year set sustainability goals called "*Better Practices, Better Planet 2020.*" The initiative recognizes the importance of procurement of our primary raw material (wood) from sustainable sources. It includes a specific commitment to increase the amount of fiber

procured from certified sources in the U.S. and to work with governments, industry, and other stakeholders to promote policies around the globe to reduce illegal logging.

Our industry is sympathetic to the concerns of committee members about over-regulation and its effects on jobs and the economy. We know firsthand about well-intentioned laws that, when implemented, result in unforeseen or unintended consequences. American paper and wood products manufacturers are facing over twenty major regulations from EPA's Clean Air Act alone. Many of these regulations could be written in much less burdensome ways and still produce equivalent or better environmental benefits. Boiler Maximum Achievable Control Technology (MACT) is just one of the rules adding to the cumulative regulatory burden. Although most boilers already are well controlled for key pollutants, EPA's Boiler MACT Rule will require more than 90% of boilers to make significant changes. Our estimated capital cost for the repropounded rule is \$4 billion, plus billions more in operating costs. We expect thousands of forest products jobs will be affected by the final Boiler MACT Rule unless further changes are made to the final rule. The U.S. forest products industry operates in a fiercely competitive global marketplace. Increasingly, the competition in our sector is coming from developing countries with lower environmental and forest management regulations than those to which we adhere in the U.S. We believe that the cumulative regulatory burden our industry is facing is placing the competitiveness of our industry and its workers at risk.

While very little illegal logging occurs in North America, this is not the case around the globe. Conversion of forest land to agriculture is the primary cause of deforestation in developing countries and illegal logging also contributes to overexploitation and unsustainable forest management. Illegal logging is not just an environmental issue – it is also a global economic issue. When illegally sourced forest-based raw materials enter the stream of commerce, a global economic problem is created for U.S. producers of products from legally sourced raw materials. For these reasons, we believe it is appropriate for the U.S. to have laws that prevent illegally harvested raw materials from entering into U.S. commerce.

By its very definition, it is difficult to get a good estimate of the economic cost of illegal logging. The World Bank estimated in a 2006 report that illegal logging costs developing countries some \$15 billion in lost assets and revenue. In addition, legitimate companies around the world involved in the forest products trade are losing billions of dollars in revenue annually due to market distortions caused by illegally harvested wood and wood products entering world markets.

AF&PA commissioned its own study in 2004 to assess the economic impact of illegal logging on timber production and trade to better inform the industry's policy. The report concluded that up to 10 percent of global wood products production and a roughly similar share of global wood products trade are of suspicious origin. The report also estimated that eliminating global illegal logging would increase U.S. wood exports by

over \$460 million per year and increase the value of U.S. domestic shipments by \$500-700 million annually.

Controlling illegal logging has been a bipartisan effort. Early on, President George W. Bush's Administration recognized that illegal logging could not be controlled at the source alone because of weak governance and enforcement structures in timber-rich developing countries, together with corruption, poverty, and poor incentives to maintain land as forests. The administration understood that global cooperation on effective forest management was necessary to protect American economic and trade interests – such as the ability of the U.S. forest products industry to compete on a level playing field. In 2003, the Bush Administration launched the President's Initiative Against Illegal Logging. The international initiative, a result of collaborative efforts involving the administration, industry, and non-governmental organizations aimed to assist developing countries in their efforts to combat illegal logging, including the sale and export of illegally harvested timber, and to fight corruption in the forest sector. The administration followed that with separate memoranda of understanding with Indonesia and China on combating illegal logging and associated trade. U.S. government officials continue to have bilateral meetings with their counterparts to address illegal logging issues. More recently, illegal logging has received broader attention in the Asia Pacific Economic Cooperation forum.

In addition to government-to-government actions to control illegal logging, AF&PA recognized that international trade needs to be used as a complementary tool to create the political will to make policy improvements and enforce changes on the ground in high-risk countries. To that end, AF&PA was an active participant in a unique stakeholder coalition comprising the forest products industry, labor, environmental organizations, and importer groups, who worked together for the Congressional passage of the 2008 amendments to the Lacey Act.

The 2008 amendments passed with bi-partisan Congressional support. The amendments make it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plants or products – including wood and paper – made of plants that are taken or traded in violation of the laws of a federal, state, or foreign law. The plants or products are considered illegally sourced when they are stolen, taken from officially protected or designated areas, taken without or contrary to the required authorization or on which appropriate royalties, taxes, or stumpage fees have not been paid, or are subject to export bans.

The amendments also require importers to file a declaration identifying the country of harvest, the genus and species of plants contained in the products, and the unit of measure. The declaration requirement, administered by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, already applies to imports of certain solid wood products but has not yet been phased-in to composite wood products or to pulp and paper, among others.

The 2008 Lacey Act Amendments brought heightened international awareness to the illegal logging issue and introduced a strong incentive throughout the global supply chain to ensure the legality of forest products. The Chatham House, a UK-based nonprofit on international and current affairs, has documented welcome reductions in illegal logging or trade over the past few years, and enacting the Lacey Act Amendments has been part of the reason.

Closer to home, we are hearing from the hardwood sector of our industry that it is seeing a pickup in demand for U.S. hardwoods not only from domestic customers but also from buyers in the Far East who reportedly are looking for hardwoods from reliable and legal sources. Many U.S. hardwood timber mills are small, family-owned businesses so the Lacey Act provides significant economic benefits to American rural businesses and jobs.

Nonetheless, implementation has not been problem free. As is the case with other laws, the government and the private sector learn from each other about implementation realities. Our industry has worked within a wide coalition including importers, industry, environmental groups, labor organizations, retailers, and others to develop consensus recommendations to the federal agencies on implementation of the Lacey Act Amendments. The consensus group provided the federal agencies with two sets of detailed documents (in 2009 and 2010) encouraging the agencies to use their rulemaking authority to clarify and streamline the requirements for industry to comply with the Lacey Act. As recently as August 2011, the consensus group submitted a joint statement to APHIS proposing a process for addressing outstanding technical issues. Unfortunately, the Administration has been slow to act on these recommendations and many of the problems persist.

The following are AF&PA's recommendations:

- First and foremost, the administration was mandated by Congress to produce a report on implementation issues within two years of passage of the 2008 amendments. This report has still not been completed. Without the report, it is difficult for Congress and private sector stakeholders to assess whether the understanding of the outstanding implementation issues are best resolved administratively or by legislative changes. We urge members of this committee to formally request that the implementing agencies provide a short-term date certain for the release of the report so that Congress and the public may have access to the information needed to determine the best course of action for solving the identified problems with implementation.
- We believe that the declaration requirement is an important tool in ensuring that businesses all along the supply chain – harvesting operations, manufacturers, brokers, importers, and retailers – become a part of the solution through joint action. The idea behind the 2008 amendments was not a heavy-handed government system of regulation, but a requirement that put the burden on the

supply chain to exercise due care in knowing where the raw material is coming from.

However, the implementation of the declaration requirement is a work in progress. Several paper companies that have implemented internal fiber tracking systems have told AF&PA that it will be very difficult to identify the genus and species of the wood fiber they use at their paper mills on a shipment-by-shipment basis. Typically, their wood fiber comes from low-risk North American sources. In anticipation of the eventual phase-in of the declaration requirement to pulp and paper, AF&PA is working with its member companies to identify alternatives that will provide flexibility for the reporting of the genus and species of fiber used at pulp and paper mills without degrading the utility of the declaration.

- AF&PA believes that the Lacey Act Amendments should not apply to plants and plant products manufactured or imported prior to the enactment of the amendments. We agree that it is unreasonable to expect importers to obtain complete supply chain information retroactive to pre-May 2008. Specific language could be developed by stakeholders that would preclude unintended gaps.
- Federal agencies should issue clear guidance that enforcement action will not be taken against individual consumers. There is no precedent in the Lacey Act's long enforcement history of the government targeting end users of individual products.
- Finally, we believe that adequate funding for federal agencies responsible for carrying out the Lacey Act mandate is critical to ensure the full implementation of the act. This should include funding for international programs that educate foreign governments and businesses on how to comply with the Lacey Act.

Recent reports about enforcement actions taken by the U.S. Fish and Wildlife Service have generated media and political attention to the Lacey Act Amendments. We believe effective enforcement is essential to combating illegal logging. We do not have the information necessary to comment on the particulars of any specific enforcement action, but we do know that enforcement of the law provides a strong deterrent to illegal behavior. Should this Committee decide changes are needed, we would urge that the changes be made administratively, if possible, before legislative changes are contemplated and that care should be taken to ensure that any changes do not undermine the legitimate economic and environmental goals of the 2008 Lacey Act Amendments.

H.R. 3210, the Retailers and Entertainers Lacey Implementation and Enforcement Fairness (RELIEF) Act

We do not support H.R. 3210 in its current form and are concerned that it sidesteps the

administrative review process set out in the original 2008 amendments. The Secretary of Agriculture was mandated to produce a report to Congress within two years of the enactment of the amendments. That report was intended to provide factual information on the implementation and enforcement of the declaration requirement and address some of the questions before the committee today. Without this report, Congress and the business community do not have a common set of information on which to make decisions about whether the implementation issues can be addressed administratively or require legislative changes. The net effect of legislation without this information may be to undermine the goals of the 2008 amendments. We believe H.R. 3210 could diminish the effectiveness of the 2008 Lacey Act Amendments.

- Limitation on application of the Lacey Act's declaration requirement to "solid wood" – We are concerned with the proposed exclusion of non-solid wood products from the Lacey Act. As we indicated above, AF&PA supports the phase-in of the declaration to pulp and paper but seeks to work with APHIS to address the difficulties in identifying the genus and species of the fiber used to produce each shipment of pulp and paper. The U.S. imports pulp and paper from regions of the world that are known to have inadequate enforcement of logging practices. Reasonable efforts can and should be taken in supply chain management to ensure that illegally sourced raw material is not used widely. The U.S. is one of the largest markets for paper in the world and its requirements will set the standard for production in many developing countries where there might otherwise not be an incentive for good environmental practices.
- Application of the Lacey Act to items imported only for commerce – We do not object to this general idea, but believe it is best dealt with through regulatory guidance. The guidance would need to be carefully crafted, however, so that it does not allow for the operation of off-shore firms that can supply individual Americans with wood products that would otherwise be in violation of the Lacey Act. A broad brush statutory change may not reflect the precision that will be required to prevent the creation of more unintended consequences.
- "Innocent Owner" Defense – H.R. 3210 seeks to eliminate the limitation on the "innocent owner" defense currently inherent in the Lacey Act. Plants and plant products imported in violation of the Lacey Act are treated as stolen goods so in effect are contraband subject to forfeiture by the government. We believe that the threat of forfeiture serves as a strong deterrent but more study may be in order.
- Review and report – We believe that the creation of a public database on "all" foreign laws from which plants and plant products are exported should be explored. However, such a government database should be considered for guidance only and should not be intended to replace the exercise of due care required for compliance with the Lacey Act. Already, the Forest Legality Alliance and other groups have developed databases to assist the trade in identifying

foreign laws that could be covered by the Lacey Act. The foundation of the 2008 amendments was a public-private partnership where companies are responsible for asking questions of their suppliers to reasonably know that the raw material they are procuring comes from legal sources.

- Standard certification process for plant and plant products – We are concerned with the level of government intervention in the marketplace that this might entail. We also are concerned that this proposal could lead to a requirement for third-party forest certification, which has the potential to discriminate against U.S.-based certification programs. We also note that a majority of small family forest owners in the U.S. are not third-party certified, and thus, could not meet such a requirement. These forests are, however, sustainably managed and harvested according to the laws of the U.S. Care was taken in the drafting of the 2008 amendments to ensure that any future regulations imposed by other countries to mirror our Lacey Act Amendments would not be harmful to U.S. exports of wood and paper products.

H.R. 4171, the Freedom from Over-Criminalization and Unjust Seizures Act (FOCUS) Act of 2012

The 2008 Lacey Act Amendments reinforce and support the laws of other countries concerning the management and trade of plants and plant products. As stated above, a Lacey Act violation is triggered by laws concerning the way plants and plant products are taken, possessed, transported, imported, or exported. Bans and restrictions on exports of raw materials such as logs and sawnwood are common laws in tropical countries and are directly linked to forest management and protection efforts. In countries where corruption is common or where there is weak governance, these laws are an important tool in controlling large exports of illegally logged timber.

In addition to supporting foreign forest governance efforts, another important objective underlying the Lacey Act Amendments was to level the playing field for legitimate American producers of forest products. We believe that the Lacey Act is meeting that objective and that the elimination of the violation of foreign laws as a basis of prosecution will eviscerate the Lacey Act.

In conclusion, given that the U.S. is the largest importer of forest products, with proper implementation and enforcement, the Lacey Act is an important tool for protecting forests around the world and controlling international trade in illegally taken plants and plant products, including wood and paper. By fighting illegal logging, the Lacey Act also is leveling the competition in the international wood market. We have received reports that many Asian manufacturers of wood products are returning to U.S. hardwood to avoid sourcing from questionable suppliers. This helps in preserving and growing jobs in U.S. communities.

As with any other law, there is room for improvement in the manner the act is being implemented and enforced. We believe that first thing the federal agencies need to do is issue their report on the implementation and operation of the Lacey Act Amendments. If it is determined that the act doesn't provide sufficient administrative authority and legislative changes are still needed, we would be glad to work with Congress to implement technical changes that would improve the effectiveness of the Lacey Act.