

November 13, 2020

The Honorable Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SE-Room 112A
Washington, DC 20436

Re: Inv. No. TPA-105-008 Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update

Dear Secretary Barton,

The Decorative Hardwoods Association (“DHA”),¹ which represents the U.S. hardwood plywood, hardwood veneer, and engineered hardwood flooring industries, submits the following comments regarding *Investigation No. TPA-105- 008: Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update*, to supplement the testimony that DHA’s President Kip Howlett provided on October 6, 2020 to the International Trade Commission.

While Most FTAs Fail to Adequately Address Illegal Logging, the Peru FTA Includes a Logging Annex with Robust Enforcement Provisions

Between 15 and 30 percent of globally traded timber is illegally harvested, which facilitates deforestation and loss of ecological diversity and distorts global trade in wood products.² In 2017, the global illegal logging trade was valued at between \$52 and 157 billion.³ Further, illicit logging is estimated to suppress global timber prices from 7 to 16 percent.⁴ While China accounts for half of global illegal timber exports,⁵ illegal logging is a serious problem

¹ The Decorative Hardwoods Association’s membership has manufacturing facilities in 20 states near the largest temperate forests in the world, which are both sustainably and legally managed. Our products include 90 percent of the hardwood stock panels and hardwood veneer panels manufactured in North America.

² See Decorative Hardwoods Association, Legal Logging, <https://www.decorativehardwoods.org/legal-logging> (last accessed Nov. 2, 2020).

³ World Bank Group et. al., *Illegal Logging, Fishing, And Wildlife Trade: The Costs and How To Combat It* at 15 (Oct. 2019) <http://pubdocs.worldbank.org/en/482771571323560234/WBGRReport1017Digital.pdf>.

⁴ See Yale School of the Environment, Global Forest Atlas: Illegal Logging, <https://globalforestatlas.yale.edu/forest-use-logging/logging/illegal-logging> (last accessed Nov. 2, 2020).

⁵ *Id.*

for countries in which the United States has free trade agreements. For example, illegal timber a significant issue in Chile,⁶ Colombia,⁷ Costa Rica,⁸ Guatemala,⁹ Honduras,¹⁰ Mexico,¹¹ and Peru.¹²

The vast majority of the United States' current FTAs do not adequately address the environmental and economic harms caused by illegal logging. The U.S.-Peru FTA, however, is an exception and includes strong forest governance provisions to “combat trade in illegal logging.” The United States' other FTAs should implement similar provisions to address illegal trade in the forestry sector; doing so would help demonstrate the United States' commitment to stop illegal logging, which is the third largest global illegal trafficking activity following drugs and people.

The Peru FTA Forest Annex contains strong enforcement provisions and outlines clear expectations under the agreement. For instance, in its Annex, Peru agreed to the following:

- Conduct audits at least every five years by a mutually agreed third party to verify that exports of those products to the United States comply with applicable Peruvian laws, regulations, and other measures governing the harvest of and trade in timber products including the tree species listed in Convention on International Trade in Endangered Species (CITES) Appendix II, relevant chain of custody requirements.
- Conduct an audit of a particular producer or exporter on the United States written request evaluating the compliance of that producer and exporter with relevant Peruvian law.
- Verify, at the United States' request, the exporter or producer of wood products has complied with Peruvian law.¹³

⁶ NEPCon, Timber Legality Risk Assessment: Chile (Aug. 2017) <https://preferredbynature.org/sites/default/files/library/2017-11/NEPCon-TIMBER-Chile-Risk-Assessment-EN-V1.2.pdf>.

⁷ Helena Calle & Jaime Flórez, This is how timber trafficking operates in Colombia, Ojo Publico (Nov. 5, 2018) <https://ojo-publico.com/921/how-timber-trafficking-operates-colombia>.

⁸ Michael J. Miller, Persistent Illegal Logging in Costa Rica: The Role of Corruption Among Forestry Regulators, *Journal of Environment & Development* (2018) <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.924.2011&rep=rep1&type=pdf>.

⁹ NEPCon, Timber Legality Risk Assessment: Guatemala (Nov. 2017) <https://preferredbynature.org/sites/default/files/library/2017-11/NEPCon-TIMBER-Guatemala-Risk-Assessment-EN-V1.2.pdf>.

¹⁰ NEPCon, Timber Legality Risk Assessment: Honduras (Nov. 2017) <https://preferredbynature.org/sites/default/files/library/2017-11/NEPCon-TIMBER-Honduras-Risk-Assessment-EN-V1.2.pdf>.

¹¹ Christine Murray, *Mexican crime gangs branching into illegal logging, researchers warn*, Reuters (Apr. 22, 2020).

¹² Cong. Rsch. Serv., IF11114, *International Illegal Logging: Background and Issues* (Feb. 26, 2019) <https://fas.org/sgp/crs/misc/IF11114.pdf>.

¹³ *See* United States-Peru Free Trade Agreement, Annex 18.3.4

The annex also identifies consequences for non-compliance, which were realized last month when USTR announced an enforcement action to block illegal timber imports from Peruvian exporter Inversiones La Oroza SRL after illegally harvested timber was discovered in Inversion's supply chain.¹⁴ This action shows that while meaningful reforms in Peru's forestry industry have occurred since implementation of the U.S.-Peru FTA, more work remains to address illegal logging, which the Annex should help facilitate.

Critically, moving away from strong enforceable provisions to voluntary standards would have the opposite effect and is inconsistent with global efforts to combat illegal logging. Indeed, several countries are already ramping up efforts to tackle this global issue. For example, in September 2020, the Netherlands ordered Sakol Nederland B.V. to cease importing tropical face plywood from Jiangsu High Hope Arser Co. Ltd., a major Chinese exporter of such plywood, due to concerns that Jiangsu harvested its wood in violation of the EU Timber Regulation.¹⁵ Moreover, the EU is heightening its efforts to combat illegally harvested timber shipped low-risk countries, including the United States and Canada. Additionally, in February of this year, the European Commission sent a formal notice to Romania criticizing the country's implementation of the EU Timber Regulation.¹⁶

Lastly, it bears emphasizing that monetizing the cost of illegal logging is critically important to the wood products industry and should be considered in antidumping calculations and free trade negotiations. As discussed in Mr. Howlett's testimony, Chinese producers are often able to buy logs from abroad, transport them to China, process them into finished products, export them to the United States, and sell them here—all for less than the cost of U.S. production. However, the use of illegally harvested logs to produce downstream wood products, including hardwood plywood and multilayered wood flooring, not only drives down the price of imported wood products to the direct detriment of U.S. and other producers that play by the rules, but also imposes distinct independent cost associated with illegal logging. These costs are significant – from environmental costs (*e.g.*, deforestation) to labor costs (*e.g.*,

¹⁴ Press Release, U.S. Trade Representative, USTR Announces Enforcement Action to Block Illegal Timber Imports from Peru (Oct. 19, 2020) <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/october/ustr-announces-enforcement-action-block-illegal-timber-imports-peru>.

¹⁵ Robert Dalheim, *Dutch Authorities Block High-Risk Chinese Plywood Import*, Woodworking Network (Sept. 23, 2020) <https://www.woodworkingnetwork.com/news/woodworking-industry-news/dutch-authorities-block-high-risk-chinese-plywood-import>.

¹⁶ European Commission, February infringements package: key decisions (Feb. 12, 2020) https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202.

unlawful wages), and should be considered in the U.S. government's calculation of trade duties as well as in its negotiation of free trade agreements.

In short, while the vast majority of the United States' current FTAs fail to sufficiently address the environmental and economic harms caused by illegal logging, our FTA with Peru includes strong forest governance protections. Other countries should adopt similar, enforceable provisions to protect sensitive ecosystems around the world.

Trade Agreements Were Not Developed to Address China and Other Non-Market Economies

U.S. trade agreements, including the WTO agreements, were conceived and enacted to enable trade with market economies and remove trade barriers. They did not anticipate or include adequate safeguards to address non-market economies like China. China's mix of state-ownership and capitalism makes it almost impossible for U.S. manufactures to compete with Chinese exports. Because of insufficient mechanisms in our FTAs to address such economies, the United States suffers as a result. While recent FTAs have started to address this issue, additional work is needed.

Current Trade Agreements Don't Do Enough to Address Circumvention

Existing trade agreements fail to sufficiently prevent and address circumvention before it occurs. For example, the United States has a commercial trade agreement with Vietnam;¹⁷ yet, Vietnam enables rampant duty evasion. In the past two years, the Department of Commerce ("Commerce") has initiated at least eight circumvention inquiries involving Vietnam. For instance, in June of this year, Commerce initiated a circumvention investigation to investigate whether hardwood plywood imports completed in Vietnam using components from China are skirting antidumping and countervailing duty orders on hardwood plywood from China; this investigation is pending.¹⁸

The United States' FTAs should ensure that U.S. government agencies, including U.S. Customs and Border Protection, work efficiently and directly with countries like Vietnam and other FTA partners to ensure that bad actors do not circumvent U.S. trade duties. Increased customs cooperation would not only help to prevent evasion, but also catch it faster when it occurs. Furthermore, it is important to ensure that products receiving free trade status are actually

¹⁷ 2007 United States-Vietnam Trade and Investment Framework Agreement ("TIFA") https://ustr.gov/sites/default/files/uploads/agreements/tifa/asset_upload_file81_12935.pdf.

¹⁸ *Certain Hardwood Plywood Products from the People's Republic of China*, 85 Fed. Reg. 36,530 (Dep't Commerce June 17, 2020) (initiation of anticircumvention and scope inquiries; Vietnam assembly).

manufactured (and do not simply undergo minor processing) in a free trade agreement country. To this end, efforts to address logging-related subsidies should also be strengthened and applied to other FTAs.

With increasing globalization and growth of global value chains, China – and other WTO members – are increasingly turning to “third-country subsidies” or “transnational subsidies,” a new form of subsidy that a government provides to a manufacturer outside the country of the granting government.¹⁹ Transnational subsidies are a concern for the wood products industry. For example, Chinese companies – which the Government of China heavily subsidizes²⁰ – are facilitating illegal logging throughout the world, driving down global timber prices while protecting its own national forests. Although China started protecting its own woodlands in recent years by restricting commercial logging in its nation’s forests two decades ago, which it then expanded in 2016, its demand for timber did not decline.²¹ Instead, China is exporting its risky and illegal logging operations abroad. Chinese companies have been responsible for illegal logging operations in eastern Russia, the Solomon Islands, Indonesia, Peru, Papua New Guinea, Mozambique, and Myanmar.²² While some of the timber is ultimately transported back to China for manufacturing, the timber that is ultimately processed and exported from a third country ultimately benefits from Chinese intervention.²³

Differential Treatment of Wood Leads to Circumvention

The tariff rates that the United States applies to imports from other countries can encourage cheating and misreporting by treating species of wood differently. For instance, imports of birch faced hardwood plywood and

¹⁹ Victor Crochet and Vineet Hegde, *China’s ‘Going Global’ Policy: Transnational Subsidies under the WTO SCM Agreement* (KU Leuven, Working Paper No. 220 – February 2020).

²⁰ See e.g. *Certain Hardwood Plywood Products From the People’s Republic of China*, 85 Fed. Reg. 11,050 (Dep’t Commerce Feb. 26 2020) (final results of CVD admin. review 2017-2018) (calculating a net subsidy rate of 194.90 percent).

²¹ Steven Lee Myers, *China’s Voracious Appetite for Timber in Russia and Beyond*, New York Times (Apr. 9, 2019) <https://www.nytimes.com/2019/04/09/world/asia/chinas-voracious-appetite-for-timber-stokes-fury-in-russia-and-beyond.html>.

²² See id; Corey Flintoff, *In Russia’s Vast Far East, Timber Thieves Thrive*, NPR (Oct. 22, 2013) <https://www.npr.org/sections/parallels/2013/10/22/239665474/in-russias-vast-far-east-timber-thieves-thrive#:~:text=Russian%20Far%20East,-,Russia%20is%20the%20world's%20largest%20exporter%20of%20timber%2C%20but,logging%20is%20a%20growing%20problem.&text=Illegal%20loggers%20are%20often%20linked,by%20paying%20off%20local%20officials>

²³ For instance, China is driving foreign direct investment into Vietnam’s wood processing industry. See Financial Times, *Vietnam’s Loosing Battle Against Trade Abuses Risks More Trump Action* (Aug. 21, 2019). China is also sending FDI to forest industries in Africa, Latin America, and Russia. See Duncan Brant, *Chinese Overseas Investment in Forestry and Industries with High Impact on Forests: Official Guidelines and Credit Policies for Chinese Enterprises Operating and Investing Abroad*, Forest Trends (Feb. 2014) https://www.forest-trends.org/wp-content/uploads/imported/chinese-investment-report_6-18-14-pdf.pdf.

multilayered wood flooring products are subject to a 0 percent duty rate while all other species are subject to an 8 percent rate. This differential rate gives a significant price advantage to birch. This discrepancy also incentivizes producers to find any way that they can to ship their product as birch. To help prevent circumvention, therefore, the United States' trade agreements should strive to provide consistent treatment for different species of wood.