



January 6, 2021

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Hon. Robert E. Lighthizer
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: USTR-2020-0036: Post-Hearing Rebuttal Comments on USTR’s Section 301 Investigation into Vietnam’s Acts, Policies, and Practices Related to the Import and Use of Illegal Timber

Dear Representative Lighthizer:

The Decorative Hardwoods Association (“DHA”),¹ which represents the U.S. hardwood, plywood hardwood veneer, and engineered hardwood flooring industries, submits the following post-hearing rebuttal comments on the Office of the U.S. Trade Representative’s (“USTR”) Section 301 investigation into Vietnam’s acts, policies, and practices related to the import and use of illegal timber.²

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% of the hardwood stock panels and hardwood veneer panels manufactured in North America.

² See *Initiation of Section 301 Investigation: Vietnam’s Acts, Policies, and Practices Related to the Import and Use of Illegal Timber*, 85 Fed. Reg. 63,649 (U.S. Trade Representative Oct. 8, 2020).

I. PARTIES ACKNOWLEDGE THAT ILLEGAL WOOD IS A PROBLEM IN VIETNAM

As explained in DHA’s initial comments to USTR, there is robust evidence that large volumes of illegal timber are imported into Vietnam.³ Indeed, at the hearing, parties generally did not dispute that illegal timber was a problem in Vietnam. For instance:

- Le Xuan Quan of Handicraft and Wood Industry Association of Dong Nai testified that “we admit there are still some importer[s] of tropical wood from high-risk area[s] like Laos or from Cambodia, from Cameroon, from Congo, to Vietnam in the past five years.”⁴
- Tran Le Huy of the Forest Products Association of Binh Dinh stated that “[m]any members don’t use illegal wood to produce wood products to ship to [the] United States.”⁵ Inherent in that statement is that some of the association’s member *do* use wood products to ship to the United States.
- Ngo Sy Hoa of the Vietnam Timber & Forest Production Association noted that its members imported significant volumes of tropical timber from Cameroon, which is a high risk country for illegal logging and associated trade.⁶

While many hearing participants emphasized that illegal imports have declined recently, even those opposed to the Section 301 investigation did not deny that illegal wood continues to be imported into Vietnam at significant volumes. For example, according to Mary Tarnowka of the American Chamber of Commerce in Vietnam, there has been “at least some illegal import and use of illegal timber.”⁷ The Vietnam Timber & Forest Products Association noted that Vietnam imported 90,000 cubic meters of illegal Cambodian wood last year and a total of 1.5 million cubic

³ See Letter from Wiley Rein LLP to Rep. Lighthizer, re: *USTR-2020-0036: Comments on USTR’s Section 301 Investigation into Vietnam’s Acts, Policies, and Practices Related to the Import and Use of Illegal Timber* (Nov. 12, 2020) (“DHA Comments”).

⁴ U.S. Trade Representative, *Section 301 I Investigation on Vietnam’s Acts, Policies, And Practices Related To The Import And Use Of Timber That Is Illegally Harvested or Traded*, Hearing Transcript (Dec. 28, 2020) at 16-17 (“Transcript”).

⁵ *Id.* at 20.

⁶ *Id.* at 37.

⁷ *Id.* at 156. Similarly, when asked David French, of the National Retail Federation did not deny that illegal wood is imported into Vietnam.

meters of tropical timber.⁸ Despite some improvement, 30% to 40% of Vietnam’s total imports of 4 to 5 million cubic meters of timber per year come from high risk areas.⁹ As such, it is clear that illegal timber in Vietnam remains a significant problem.

II. INADEQUATE SAFEGUARDS ARE IN PLACE TO ENSURE THAT ILLEGAL WOOD DOES NOT ADVERSELY IMPACT COMMERCE IN THE UNITED STATES

A. Vietnam’s Agreement with the EU is in its Early Phase

Many speakers highlighted Vietnam’s recent agreement with the European Union as a means to address illegal logging in Vietnam’s supply chain; however, this agreement remains in its infancy. Indeed, as discussed at the hearing, it will take at least two years to “overcome the gap between the Europe and Vietnam enterprises.”¹⁰ Moreover, Vietnamese producers struggled at the hearing to articulate immediate, concrete steps that have started to take or plan to take to comply with the agreement.¹¹ Accordingly, though a promising development, Vietnam’s agreement with the European Union is insufficient for purposes of addressing illegal timber in Vietnam.

B. Private Efforts Alone Are Inadequate to Address Illegal Timber

At the hearing, many industry participants testified that OEM audits and private certifications will keep illegal wood out of the United States. Although these private efforts to stop illegal wood from being imported into the United States are a step in the right direction, alone,

⁸ *Id.* at 25.

⁹ Phuc Xuan To, *Efforts to exclude illegal timber from public purchasing: Unfolding developments of a public procurement policy in Vietnam*, Forest Trends: Viewpoints (June 18, 2020), <https://www.forest-trends.org/blog/efforts-to-exclude-illegal-timber-from-public-purchasing-unfolding-developments-of-a-public-procurement-policy-in-vietnam/>.

¹⁰ Transcript at 45 (Hoai).

¹¹ *See id.* (“I cannot, you know, list all of [the] activities we have been [doing] wuth our member companies.; *id.* at 33 (Quan) (“We are starting that all now, but that is very tricy, to ensure the timber that we import at this moment” complies with the regulations).

they are not enough. Between 15% and 30% of globally traded timber has been illegally harvested. Not only does the use of illegally harvested logs facilitate deforestation and loss of ecological diversity in sensitive ecosystems in Southeast Asia, Latin American, and Africa, it also distorts global trade in wood products. As a result, producers that use cheaper, illegally harvested wood receive an artificial economic advantage compared to responsible producers that use sustainably and legally sourced logs. Recent estimates suggest that illicit logging is suppressing global timber prices by 7% to 16%.¹² As such, the extensive presence of illegally harvested wood in Vietnam distorts its legal wood market. Illegal wood displaces legal wood, even if it is used for domestic consumption or it is consumed in other countries other than the United States.

C. There is Robust Evidence that Illegal Wood is Being Transshipped from China Through Vietnam to the United States

In addition to distorting the wood products trade, there is robust evidence that illegal wood is being transshipped from China, through Vietnam, to the United States, as explained in detail in DHA's initial comments USTR.¹³ China is the world's largest illegal wood consumer.¹⁴ China has been gradually increasing its foreign direct investment in the Vietnamese wood sector, although the exact dollar amount is difficult to pinpoint.¹⁵ While the true size of this country-of-origin fraud is unknown, wood and furniture sector has had over 30% growth in imports from China and exports to the United States when comparing the first half of 2018 and the first half of 2019.¹⁶

¹² See *Illegal Logging*, Yale School of the Environment: Global Forest Atlas, <https://globalforestatlas.yale.edu/forest-use-logging/logging/illegal-logging> (last accessed Nov. 2, 2020).

¹³ DHA Comments at 5-10.

¹⁴ See *China's Environmental Abuses Fact Sheet*, U.S. Department of State (Sept. 25, 2020), <https://www.state.gov/chinas-environmental-abuses-fact-sheet/>.

¹⁵ *Vietnam's Losing Battle Against Trade Abuses Risks More Trump Action*, Financial Times (Aug. 21, 2019), <https://www.ft.com/content/210f9188-c415-11e9-a8e9-296ca66511c9>.

¹⁶ See *id.*

As discussed in more detail in DHA’s initial comments to USTR, Chinese transshipment through Vietnam is evidenced by recent circumvention proceedings involving antidumping and countervailing duty (“AD/CVD”) orders on hardwood plywood.¹⁷ Chinese transshipment through Vietnam is also occurring with respect to the AD/CVD orders on wooden cabinets and wood mouldings from China.¹⁸

Lastly, China imported roughly 2.3 million cubic meters of logs from Papua New Guinea and approximately 1.9 million cubic meters of logs from the Solomon Islands between January to November 2020 – both countries are at high risk for illegal logs.¹⁹ China also imported approximately 3.3 million cubic meters of hardwood sawn timber from Thailand, which is also a country of concern. Notably, these import volumes are comparable to Vietnamese import volumes from Cambodia, Thailand, and elsewhere during the same period last year. Simply put, as the largest furniture and plywood producer in the world, China continues to fuel significant global demand for illegal logs.

III. STRONG ENFORCEMENT PROVISIONS ARE NECESSARY TO ADDRESS THE ENVIRONMENTAL HARMS CAUSED BY ILLEGAL LOGGING

For the reasons described above, voluntary measures are not enough to address illegal logging issues in Vietnam. The United States-Peru Free Trade Agreement Forest Annex contains strong enforcement provisions and outlines clear expectations under the agreement, thereby providing a potentially useful model for addressing the use of illegal timber in Vietnam. For instance, in its Annex, Peru agreed to the following:

¹⁷ *Certain Hardwood Plywood Products from the People’s Republic of China*, 83 Fed. Reg. 513 (Dep’t Commerce Jan. 4, 2018) (countervailing duty order); *Certain Hardwood Plywood Products from the People’s Republic of China*, 83 Fed. Reg. 504 (Dep’t Commerce Jan. 4, 2018) (antidumping duty order).

¹⁸ DHA Comments at 8-9.

¹⁹ *China Wood and Its Products Market Monthly Report*, Vol. Wood, Issue 263 (Dec. 2020) at 40 and 42.

- 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.²⁰

The annex also identifies consequences for non-compliance, which were realized recently 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 Inversiones' supply chain.²¹ This action shows that while meaningful reforms in Peru's forestry industry have occurred since implementation of the United States-Peru Free Trade Agreement, more work remains to address illegal logging, which the Annex should help facilitate.

Respectfully submitted,

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Association*

²⁰ See United States-Peru Free Trade Agreement at Annex 18.3.4.

²¹ Press Release, Off. of the United States 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>.



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