

GREENPEACE • DEFENDERS OF WILDLIFE
CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

March 29, 2002

Ann M. Veneman
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Gail M. Norton
Secretary
U.S. Department of Interior
1849 C. Street, NW
Washington, DC 20240

Via facsimile to: (202) 720-2166 and (202) 208-6956

Dear Secretaries Veneman and Norton:

It has come to our attention that in recent weeks, substantial shipments of Brazilian bigleaf mahogany (*Swietenia macrophylla*) valued at more than US\$10 million have arrived at Baltimore, Maryland, Norfolk, Virginia, Gulfport, Mississippi, Charleston, South Carolina, Houston, Texas and other U.S. ports of entry. We are writing to advise you of the substantial likelihood that the mahogany in these shipments has been taken, possessed, transported and sold in violation of the Convention on International Trade in Endangered Species (CITES) and the laws of Brazil and the United States. As the relevant authorities for U.S. compliance with CITES in these circumstances, we urge you to detain these shipments in port until an authoritative determination has been made regarding the legality of the mahogany they contain. Based on the facts as we understand them, failure to do so will result in violations of the U.S. Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1544, and the Lacey Act, 16 U.S.C. § 3371-3378, as well as U.S. obligations under CITES. More fundamentally, a decision to allow the entry of these logs into the United States could spur additional illegal logging in Brazil, and undermine the efforts of Brazilian authorities to fight the outbreak of illegal logging that is ravaging forests in their own country and elsewhere. In view of this imminent threat of irreparable injury, we are prepared to seek a preliminary injunction in federal court should you decide to authorize the entry of these shipments.

With 158 Parties, including both the United States and Brazil, CITES is the primary international mechanism for protecting endangered species of plants and animals from excessive and unsustainable international trade. As you are no doubt aware, full compliance with both the letter and the spirit of CITES has been a guiding principle in U.S. foreign policy relating to wildlife. As you may also be aware, President Bush has recently declared bringing an end to illegal logging as an important foreign policy

objective of his Administration. George W. Bush, speech delivered at NOAA, Feb. 14, 2002. In light of these circumstances, we consider U.S. treatment of the mahogany shipments at issue a matter of great significance.

Since 1998, Brazilian populations of bigleaf mahogany have been listed on CITES Appendix III. 50 CFR § 23.23. Under the Convention, the United States may accept imports of Appendix III species only if they are accompanied by a valid export permit from the country of origin. CITES, Article V.3. As a prerequisite to the issuance of a valid export permit for an Appendix III specimen, the treaty requires the CITES management authority of the exporting State to determine “that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora.” CITES, Article V.2(a). The Conference of the Parties to CITES has clarified the obligations of the importing Party in this circumstance by recommending that “Parties not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin.” CITES, Res. Conf. 10.2, § 2(h).

On October 22, 2001, the Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis—IBAMA, the CITES management authority for Brazil, ordered the immediate suspension of all mahogany exports from the country, based on its admitted inability to verify that mahogany logs entering trade had been harvested legally under Brazilian law. IBAMA, INSTRUÇÃO NORMATIVA N° 17, de 22 de Outubro de 2001. IBAMA made this determination following the seizure of approximately 21,000 cubic meters of illegal mahogany last fall, and in the wake of its recent assessment that as much of “80% of all Amazon timber originates from illegal sources”. Greenpeace (2001), *Partners in Mahogany Crime* at 1. In an effort to bring this situation under control, IBAMA subsequently ordered the immediate cessation of all mahogany logging and processing throughout Brazil and invalidated the forest management plans that had authorized those activities. IBAMA, INSTRUÇÃO NORMATIVA N° 22, de 05 de Dezembro de 2001 (Attachment 1).

It is our belief that all mahogany shipments now awaiting entry into the United States were exported from Brazil after IBAMA banned all such exports and suspended mahogany logging operations throughout the country. We understand that each of these shipments was accompanied by an “export permit” from the government of Brazil. It is our further understanding, however, that these permits, which were prepared under injunctions by Brazilian district court judges, were completed without the necessary findings of legality required by Article V.2(a) of CITES. In fact, such a finding could not have been made consistent with Brazilian law because IBAMA’s December 5th decree confiscated the forest management plans under authority of which these logs were harvested, rendering all stocks of mahogany awaiting marketing in the country illegal. IBAMA itself has pointed this out in pending appeals to Brazil’s Regional Superior Tribunals to revoke the injunctions.

Without the determination of legal harvest that is the primary criterion of validity for an Appendix III export permit under Article V.2(a), the “export permits” presented with the

mahogany shipments at issue here are necessarily invalid. Therefore, consistent with its obligations under Article V.3, and with CITES Resolution Conf. 10.2, the United States must deny entry for these shipments. Confronted with the same issue, the European Commission's Environment Directorate advised Management Authorities of EU States that, consistent with the requirements of CITES, they should not accept export permits for Brazilian mahogany without obtaining an authoritative statement from the Brazilian government that the specimens were legally acquired. EC Directorate-General, Environment, Note to Management Authorities of Member States, 26 March 2002 (Attachment 2). We believe that any decision to do otherwise would be arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law. See 5 U.S.C. § 706.

We also believe that the release of any of these shipments to any person within the United States will result in violations of the ESA and the Lacey Act. Article VIII of CITES requires the United States to take measures to enforce the Convention and "to prohibit trade in specimens thereof," including measures to penalize trade in illegal specimens and to confiscate or return those specimens to the country of origin. Consistent with these obligations, section 9 of the ESA makes it unlawful for any person "to engage in any trade in any specimens contrary to the provisions of the Convention." 16 U.S.C. § 1538(c). Similarly, the Lacey Act makes it unlawful for any person to import or receive any plant "taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States." 16 U.S.C. § 3372(a)(1). The Lacey Act explicitly defines "plant" to include species listed on the CITES appendices. 16 U.S.C. § 3371(f). The mahogany specimens at issue here are being traded in violation of Article V of CITES, and, thus, in violation of the ESA. Because CITES is a "treaty...of the United States", the transport of the mahogany in violation of CITES also violates the Lacey Act. Both the ESA and the Lacey Act declare that any specimens so traded shall be subject to seizure and forfeiture. 16 U.S.C. §§ 1540(e)(4) and 3374 (a)(1). In view of these violations, we urge you to institute proceedings for the seizure of these logs, or for their return to Brazilian authorities, in accordance with applicable law.

Unchecked illegal logging is driving catastrophic losses in forests and forest biodiversity throughout the Brazilian Amazon, and around the world. The U.S. provides the largest single market for illegal forest products; and so long as that market remains open, the destruction will continue. President Bush is not alone in acknowledging the need for action to stop this trend. Less than two weeks ago, the environment and forest ministers of the world, meeting at the United Nations Forum on Forests, issued a joint declaration urging the upcoming World Summit on Sustainable Development to call for immediate action on domestic forest law enforcement and the illegal international trade in forest products. Declaration of Ministers at the Second Session of the United Nations Forum on Forests, March 14, 2002 (E/CN.18/2002/L.2). You have the opportunity to take that action now. We urge you to seize that opportunity, and give substance to our government's promised leadership in this global effort.

In light of the serious nature of our concerns and the imminence of your expected decision, we would appreciate a response to our letter prior to any further action you may take with respect to these shipments. Please also be advised that this letter constitutes notice under the ESA of violations of that statute. We are prepared to seek judicial relief under the Administrative Procedure Act and other laws if this issue is not properly resolved.

Thank you for your consideration.

Respectfully submitted,



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(Attachments)