



January 6, 2021

The Honorable Robert E. Lighthizer
United States Trade Representative
600 17th Street NW
Washington, DC 20508

RE: Post-Hearing Comments – Section 301 Investigation: Vietnam’s Acts, Policies and Practices Related to the Import and Use of Illegal Timber (USTR-2020-0036)

Dear Ambassador Lighthizer,

Thank you for the opportunity to testify at the public hearing on December 28 regarding the Section 301 Investigation: Vietnam’s Acts, Policies and Practices Related to the Import and Use of Illegal Timber (USTR-2020-0036). The following are our post-hearing comments based upon the questions during my testimony.

NRF, the world’s largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation’s largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

I would like to again reiterate NRF’s support for ensuring that our trading partners live up to their international trade commitments. However, we do not believe action against Vietnam or other trading partners regarding the use of illegal timber should be taken by USTR under a Section 301 investigation. Most importantly, we do not think USTR should consider using tariffs as the tool to address this investigation. We agree with other hearing witnesses that any action should be strategic and focused on individual actors, not actions across the board that will impact legitimate trade. USTR should use the opportunity for ongoing negotiations and dialogue to address the issue.

Our members continue to question how USTR plans to implement enforcement actions against imports by importers who have manufacturing operations in Vietnam or use vendors who fully comply with the Lacey Act traceability requirements. Are those companies going to subject

NATIONAL RETAIL FEDERATION
1101 New York Avenue, NW, Suite 1200
Washington, DC 20005
www.nrf.com

to the proposed enforcement actions or would they be excluded from the enforcement action? We continue to believe that USTR needs to address this issue.

NRF's members have long engaged in efforts to ensure responsible sourcing and environmental management within their supply chains. If specific actors are engaging in the use of illegally traded timber, our member companies want to know so that they can ensure those actors are not part of their supply chains. This is critical to their ongoing due diligence efforts to ensure only legally traded timber is part of their supply chain.

During the hearing, I was asked to elaborate on the following questions from the Section 301 Committee:

- What additional steps do retailers take through their due diligence efforts to ensure there is no illegal timber in their supply chains?
- How do retailers define and determine high risk-products or high-risk sources that use timber in their supply chains?

We received the following information from several of our retail members that we would like to share as examples of the steps retailers take to ensure there is no illegal timber in their supply chains. It is important to note that retailers rely on a variety of sources (government agencies, NGOs, international organizations, etc.) to help them define and determine risk for both products and countries. This is highlighted below in the examples.

- **Retailer One** – We fully support existing programs like the Lacey Act and the CITES programs to determine material in our products. The origin and genus of the species must be identified during the product development and sourcing process. During the design review, we employ wood sourcing policies designed to protect the environment and forests from illegal timber harvesting. One of these programs that has strong participation within the furniture industry is the Sustainable Furnishings Council. We work with them to make sure that no illegal timber is being harvested. We encourage all our manufactures to participate in the program as well. Only designs and sources approved by our product development team make it to production. During our initial audit process called pre-production audit by our quality and sourcing teams, design and sourcing compliance is maintained at every stage and the factory must showcase documentation of sourcing wood only as approved and from authorized providers. On an ongoing basis, Lacey Act compliance is monitored across every transaction when importing into the United States.
- **Retailer Two** – We record the genus, species and country of harvest for each wood type for every item we purchase (both domestically and imported). We conduct an internal wood audit semi-annually. We maintain a list of restricted wood types that is based on the genus, species, country of harvest and the country of origin (manufacturing) for our products. Each wood type/country of harvest is assigned a risk category (red = highest risk for illegal logging, orange = medium risk, green = low risk). For any items/wood types that are flagged as high or medium risk, we would require either third party certification through the Forest Stewardship Council or request documentation regarding

proof the wood was legally harvested. In addition to these controls, we also require the vendor to submit a plant declaration form with each shipment stating the legal origin of the timber. These documents are confirmed by our customer broker for each entry.

With regards to determining risk, we maintain a comprehensive list of wood that assigns a risk category based on the genus, species and country of harvest. This list is updated manually and used to conduct our risk assessment. Items flagged as high risk (red) are prohibited from sourcing. Items listed as medium risk require either FSC certification or we require additional documentation proving the wood was sourced legally. In addition, we also assess risk based on the country where the product is manufactured.

- **Retailer Three** – Vietnam is a key resource for our wood furniture programs. Vietnam became more important as a supplier in light of anti-dumping and other regulatory efforts aimed at China. Almost all of the wood used in the furniture products we source from Vietnam is grown in the United States because we specify hardwoods such as cherry, oak and maple. This wood is grown in the U.S. and shipped to Vietnam for incorporation into products that are sold to the U.S. and other markets. We use the same manufacturers as other mid- to high-level furniture retailers. The most common wood available from Cambodia and Laos is acacia and rubberwood, which is softer. We use some of this wood but substantially less than the hardwoods.

Our vetting process for manufacturing resources incorporates our customary vendor requirements and there may be an opportunity to adjust some of these requirements to address the concerns raised by the USTR. This would raise the auditing, visibility and enforcement issues we're facing on other sourcing regulations but is something we would consider. Other than those requirements, our decisions are based on capacity and quality control and our desire to diversify our supplier base.

- **Retailer Four** – Risk is tough to say for everyone because each company can define it differently and their products can also drive their level of risk. We primarily deal with pine, oak, birch, beech and acacia woods, so our overall solid wood risk is much lower than just by the types of woods used.

Regional understanding also plays an important part in a company's risk assessment. We do a large volume out of China. We know that there have been issues with harvesting practices in Russia and timber going across the border to China to be used in a number of ways, including board material. As a result, we will perform more reviews of the chain of custody documentation and perform more forestry audits for our suppliers in China who have sourcing of raw materials out of Russia. If during one of these audits or reviews we identify any discrepancies or missing documents, we will review these issues with the supplier and that supplier's risk assessment will increase because of these discrepancies. This means these suppliers will get reviewed more often until the corrective actions are shown to have been put in place and are working. If the supplier is not able to correct the issues, we have and will stop using a supplier for non-compliance with our corporate forestry standards.

Each of our suppliers that have timber in their products are required to meet our forestry requirements. Part of this is submitting the Lacey information on any component piece which contains wood or paper material. This information is required to be updated for any changes in sourcing or any changes in the materials which could affect the genus/species or component amount in the products. All of our suppliers must maintain their chain of custody documentation and this information is submitted to us multiple times per year, so we are able to perform internal audits. Each supplier will go through a forestry audit at least once every two years. Suppliers in high-risk geographic areas or who have shown any issues with the reviews by will be audited more frequently. These audits are performed by our forestry co-workers or in conjunction with third party auditors.

We also work with a number of NGOs and environmental groups and their programs to help insure better industry practices and conservation efforts in specific regions. This has helped us identify areas which need increased attention or may pose a higher risk than originally believed.

- ***Retailer Five*** – The United States Department of Agriculture (USDA) division of Animal and Plant Health Inspection Service (APHIS) have been tasked with enforcement of the Lacey Act. APHIS has flagged specific tariff numbers they feel would most likely contain plant material and it is an importer’s responsibility to ensure that anything subject to Lacey Act (regardless of the tariff flagging) would have a proper declaration done. There are several steps that we conduct to ensure compliance with Lacey Act. They include the following:
 - **Testing** – All suppliers must submit the Supplier Certification of Lacey Act Compliance at the time of production or annual testing.
 - **Classification & Compliance Review** – We have a specific Standard Operating Procedure for classification and admissibility of all imported products, including those that may be subject to Lacey Act. All direct import products must be classified and approved at the time of quote and prior to shipment from origin. During the product review, our classification team reviews the material breakdown provided by supplier. Within the “Material Breakdown” section, the supplier is asked whether or not the product contains any plant or wood material. If a supplier answers “Yes” to the wood question, they are required to complete a Customs Questionnaire.

The classification team will search the U.S. National Plant Germplasm System (NPGS) Germplasm Resources Information Network (GRIN) database to ensure genus and species has been spelled correctly. They will then research the Natural Resources Conservation Service Federal Noxious Weed list and Threatened & Endangered List. If an item is on either list, the issue is escalated and the buyer is informed that the material used on product is endangered and not allowed to be imported.

The classification team member will also search the *International Union for Conservation of Nature Red List*. If an item is on the list, the issue will be escalated and the buyer is informed that the material used on the product is endangered and not allowed to be imported.

Finally, if the supplier claims that their wood is *FSC Certified*, the claim must be validated. The supplier must provide copy of their FSC Certificate which will be validated.

- **High Risk Products** – Our Lacey Matrix is a requirement and goes hand-in-hand with the Lacey Declaration. Any product made of wood that meets the criteria in our matrix, regardless of the Lacey Declaration schedule, will require additional documents to support origin of wood due to our requirement. If the product contains 15% or more of wood, then Lacey Matrix documents are required. The documentation required for Lacey Declaration and Lacey Matrix must be provided by the supplier and attached to the product in our tool. The documents must be translated into English. The supplier must also provide a Government Certificate of Authority, a Forest Management Unit Certificate or a similar document that indicates their government approved of the harvest. Additionally, the supplier must provide additional documents that should show the chain of ownership along the way from the beginning when the wood was harvested to the end when purchased by the supplier.
- **Retailer Six** – We have a Forest Products Policy which is posted on Partners Online (POL). The scope currently covers our products and packaging containing a majority of wood-based material. We also require all wood, paper, paper-based packaging, and wood-based fiber vendors to comply with the requirements of the United States Lacey Act.

We have several processes and checks in place for identifying items containing wood, whether owned or from a national brand. We take steps to ensure items containing wood are properly identified and comply with Lacey Act provisions. We verify genus and species and utilize the USDA National Plant Germplasm genus/species website. In addition, all imported items have the parent question: “Does your item contain any material subject to CITES?” We conduct periodic audits to review whether CITES applies regardless of how the vendor answered the question. The CITES and Lacey data elements are sent to Customs at time of import if applicable.

We are committed to sourcing wood-based products from credibly certified well-managed forests to avoid and/or minimize contributions to deforestation and forest degradation. We work with vendors, suppliers and other stakeholders to eliminate unacceptable sources and progressively increase the amount of responsibly sourced wood, paper, paper-based packaging, and wood-based fiber.

We work with vendors to trace the origin of raw materials. Implementing the Forest Products Policy not only determines the origin of the raw materials in our products but attempts to improve the sustainability of forests where the timber in those products was grown. We regularly monitor and report on the progress of this policy implementation.

We also recognize the value of other certifications such as the Sustainable Forestry Initiative (SFI), Programme for the Endorsement of Forest Certification (PEFC) and the Forest Stewardship Council (FSC). We work with our suppliers to achieve full visibility to their supply chain of custody and increase the penetration of FSC certified products available in our stores and online.

Vendors that produce products made of wood, paper, paper-based packaging and wood-based fiber covered under the scope of this policy ensure that their products do not contain the following components:

- Illegally harvested and traded timber
- Timber harvested in violation of traditional or civil rights
- Timber harvested from areas threatened by poor forest management activities
- Timber harvested from areas converting from forests and other wooded ecosystems to plantations or non-forest use
- Genetically modified timber harvesting

The examples provided above are just a small sampling of what NRF members are doing to ensure that illegally harvested timber is not used within their supply chains by any of their vendors or suppliers. Some of these programs and systems are extremely complex. However, all use available tools and resources from either existing government resources, NGOs or other programs to help support their efforts.

Sincerely,



David French
Senior Vice President
Government Relations