

**UNITED STATES COURT OF INTERNATIONAL TRADE
BEFORE: THE HONORABLE RICHARD K. EATON, JUDGE**

NATIVE FEDERATION OF THE MADRE
DE DIOS RIVER AND TRIBUTARIES; et al.,

Plaintiffs,

v.

BOZOVICH TIMBER PRODUCTS, INC.;
TBM HARDWOODS, INC.; et al.,

Defendants.

Co. No. 0600181

**DECLARATION OF
DR. SUSAN LIEBERMAN**

DR. SUSAN LIEBERMAN hereby swears and declares the following in support of

Plaintiffs' motion for a preliminary injunction:

I. Qualifications and Background

1. I, Dr. Susan Lieberman, am Director of the Global Species Programme of WWF (World Wide Fund for Nature, also called World Wildlife Fund in North America) International ("WWF"), a position which I have held since July 2001. The Global Species Programme focuses on flagship species of international conservation concern, such as pandas, tigers, rhinos, elephants, whales and sea turtles; endangered and threatened species of ecoregional concern, and species subject to international wildlife trade and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), including *Swietenia macrophylla*, more commonly known as bigleaf mahogany.

2. The statements and opinions in this declaration are my own and not those of WWF.

3. Prior to my work for WWF, I worked for the U.S. Government for 11 years on international conservation issues. From 1998 until 2001, I served as the Chief of the Division of Scientific Authority of the U.S. Fish and Wildlife Service ("USFWS"). The Division of Scientific Authority is responsible for all scientific work and assessments by the U.S. government related to CITES and the Endangered Species Act ("ESA"). From 1994 until 1998, I served as Chief of the CITES Operations Branch of the Division of Management Authority of USFWS, which is responsible for implementation of CITES in the United States. From 1990 until 1994, I was a CITES Policy Specialist with the Division of Management Authority at the USFWS.

4. From 1987 to 1990, I was the Associate Director for Wildlife for The Humane Society of the United States, where I worked on international wildlife trade issues. My work focused on African elephants, the ivory trade, and the wild bird trade.

5. From 1982 until 1987, I taught undergraduate and graduate level Ecology and Evolutionary Biology at the University of Southern California in Los Angeles ("USC"), and other colleges in the Los Angeles area. Concurrently, I did postdoctoral research at USC and California State University.

6. In 1982, I received a Ph.D. in tropical rainforest ecology with a specialization in amphibians and reptiles (in Costa Rica) from USC's Department of Biological Sciences. My research publications include work on primate ecology and evolution, desert tortoise ecology and evolutionary biology, amphibian and reptile ecology, and tropical rainforest ecology. In 1974, I received a B.Sc. in Biology with a specialization in Ecology from the Hebrew University in Jerusalem, Israel.

7. I have approximately 19 years of experience with the design, implementation, and enforcement of CITES. As head of the United States Scientific Authority, I was responsible for all CITES policy issues, including making CITES non-detriment findings for

strict accordance with CITES provisions. Those controls are the obligation of CITES Parties (member states), both on import and export of specimens of listed species.

11. Bigleaf mahogany (*Sweitenia macrophylla*) is listed in CITES Appendix II. In November 2002, the 12th meeting of the Conference of the Parties (COP12) to CITES included all neotropical populations of bigleaf mahogany in Appendix II; that listing entered into effect on 15 November 2003.

12. Trade in Appendix II species requires a valid export permit, which must be issued by the designated CITES Management Authority of the country of export. The issuance of a permit by the Management Authority is predicated on the issuance of two required “findings”—one by the Management Authority and one by the designated Scientific Authority. The Scientific Authority of the exporting country is required to make a “non-detriment finding” and the Management Authority is required to make a “legal acquisition finding.” These are requirements of the CITES treaty. Permits that are issued without such findings are not issued in accordance with CITES, and are invalid. A non-detriment finding is a determination that such export will not be detrimental to the survival of that species. A legal acquisition finding is a determination that the specimen was not obtained in contravention of the laws of the exporting State.

13. The Scientific Authority of an exporting country is also obligated under the CITES treaty to monitor the exports of Appendix II species to ensure that trade is sustainable. As defined under CITES, this means that the Scientific Authority must ensure that a species is maintained throughout its range at a level consistent with its role in the ecosystem and well above the level at which that species might become eligible for inclusion in Appendix I. CITES prohibits the import of Appendix II species unless such imports are accompanied by a valid export permit (i.e., a permit issued after a valid non-detriment finding and a valid legal acquisition finding).

14. CITES determinations must be based on scientific analysis and data. Specifically, non-detriment findings require population studies; for trees, that includes analyses of regeneration, distribution, and other factors to understand the impact of the proposed trade on the continued viability of the species. These analyses for a species such as mahogany should include descriptions of a species' landscape-scale distribution, density, growth and mortality patterns in selectively logged and unlogged forests, analyses of reproductive patterns, and recommendations for forest management measures that ensure future regeneration of the species. Attached as Exhibit 1 is an example of a valid non-detriment finding issued by the United States for Ginseng (a native U.S. species listed in Appendix II that is exported commercially by the United States in large quantities).

15. Legal acquisition findings are distinct from non-detriment findings, and a legal acquisition finding by a Management Authority does not satisfy a Scientific Authority's obligation to make a valid non-detriment finding. A legal acquisition finding by the Management Authority verifies that particular export specimens were not obtained in contravention of the laws of the exporting State.

16. Quotas do not constitute or replace non-detriment findings. Accordingly, quotas that are established without a non-detriment finding, and without the necessary scientific analysis underlying that finding, do not satisfy the requirements of CITES Article IV. Many exporting countries use annual quotas to assist them in managing exports; they may choose to issue an annual quota based on scientific analyses, rather than evaluate each shipment on a permit-by-permit basis. It is acceptable for an exporting country to issue a scientifically-based annual quota. However, the designation of an export quota without scientific underpinnings is invalid, and a quota is not a substitute for scientifically-based non-detriment findings.

III. Analysis and Opinions

17. In connection with this matter, I have reviewed the following documents:

- Multisectoral Commission on Illegal Logging in Peru, *Proposal for a National Strategy for the Eradication of the Extraction and Illegal Trade of Timber-Yielding Forest Resources in the Peruvian Amazon* (Adele Negro trans.) (Jan. 2003);
- Letter from Ignacio Lombardi, La Molina, to Teddi Peñaherrera, World Wildlife Fund (Adele Negro trans.) (March 30, 2004);
- INRENA and La Molina, Republic of Peru, *National Report: Implementation of the Appendix II listing of Mahogany: Peru* (2004);
- International Tropical Timber Organization's Project Document, *Making the Mahogany Trade Work: Report on the Workshop on Capacity-Building for the Implementation of the CITES Appendix II listing of Mahogany* (2004);
- Letter from Ignacio Lombardi, La Molina, to Rosario Acero Villanes, INRENA (Jennifer Berger trans.) (Nov. 12, 2004);
- Letter from Peter Thomas, Chief, Division of Management Authority, U.S. DOI, USFWS, to Leoncio Alvarez Vasquez, Chief, INRENA (Dec. 14, 2004);
- Letter from Leoncio Alvarez Vasquez, Chief, INRENA, to Peter Thomas, Chief, Division of Management Authority, U.S. DOI, USFWS (Feb. 9, 2005);
- INRENA, *Determination of the Export Quota for Mahogany for the Year 2005* (Adele Negro trans.) (May 13, 2005);
- INRENA, *Resolution of the Office of Director No. 105 (2005 Export Quota)* (Adele Negro trans.) (May 20, 2005);
- INRENA, Public Announcement Regarding Resolution 105-2005-INRENA (Kelley Reynolds trans.) (Aug. 23, 2005);
- Letter from Ignacio Lombardi, La Molina, to Leoncio Alvarez Vasquez, Chief, INRENA (Adele Negro trans.) (Nov. 28, 2005);
- INRENA, *Determination of the National Export Quota for Mahogany for the Year 2006* (Adele Negro trans.) (Jan. 16, 2006);
- Letter from Vega Salomon, La Molina, to Lucila Pautrat Oyarzun, Racimos de Ungurahui Working Group (Adele Negro trans.) (Jan. 20, 2006);
- Letter from Peter Thomas, Chief, Division of Management Authority, U.S. DOI, USFWS, to Leoncio Alvarez Vasquez, Chief, INRENA (April 12, 2006);
- Letter from Ignacio Lombardi, La Molina, to Peter Thomas, Chief, Division of Management Authority, U.S. DOI, USFWS (May 2, 2006);
- Letter from Willem Wijnstekers, Secretariat General, CITES, to Leoncio Alvarez Vasquez, Chief, INRENA (May 4, 2006);
- Fax from Willem Wijnstekers, Secretariat General, CITES, to Manuel Joaquín Manrique Ugarte, Ministry of Agriculture of Peru (May 5, 2006);

- Letter from Willem Wijnstekers, Secretariat General, CITES, to Peter Thomas, Chief, Division of Management Authority, U.S. DOI, USFWS (May 5, 2006);
- Letter from Leoncio Alvarez Vasquez, Chief, INRENA, to Peter Thomas, Chief, Division of Management Authority, U.S. DOI, USFWS (May 5, 2006); and
- Complaint in *Native Federation of the Madre de Dios River and Tributaries, et al. v. Bozovich Timber Products, Inc., et al.*, No. 060081 (CIT filed June 6, 2006).

18. Based upon the materials I have reviewed, and on my experience and expertise, I have reached the following conclusions about which I will testify if called upon to do so at trial.

19. The designated CITES Scientific Authority for Peru, La Molina, lacks the information necessary to make a valid CITES non-detriment finding for exports of bigleaf mahogany. La Molina has repeatedly stated that it requires more information before it can make a non-detriment finding, including population studies, geographic distribution studies, reproductive biology studies, and studies on the sustainability of harvesting. *See, e.g.*, Letter from Ignacio Lombardi, La Molina, to Teddi Peñaherrera, World Wildlife Fund (WWF) (Adele Negro trans.) (March 30, 2004); INRENA and La Molina, Republic of Peru, *National Report: Implementation of the Appendix II Listing of Mahogany: Peru 9* (2004). As recently as January 2006, INRENA (the CITES Management Authority of Peru) stated that La Molina had not completed the studies necessary to make a non-detriment finding. Letter from Vega Salomon, INRENA, to Lucila Pautrat Oyarzun, Racimos de Ungurahui Working Group (Adele Negro trans.) (Jan. 20, 2006). Based on these communications and the fact that Peru has only just begun a survey of bigleaf mahogany populations in Peru, it is evident that La Molina has not yet acquired the data necessary to make a valid non-detriment finding. Accordingly, any exports of bigleaf mahogany by Peru are not based on a scientifically valid non-detriment finding.

20. I have reviewed the 2005 and 2006 quotas for mahogany exports by Peru, and I did not find evidence of consideration of any scientific analysis concerning the status of

mahogany in Peru. On the contrary, these quotas appear to be based solely on commercial considerations. They were established by INRENA at a time when La Molina admitted that it lacked the necessary information to make a non-detriment finding and the quotas themselves do not include any scientific analysis of population studies or regeneration analysis that are necessary to make a non-detriment finding. Rather, the 2005 and 2006 quotas were set merely by making a slight adjustment to the overall level of mahogany exports from 2004. As such, they cannot reflect or constitute a valid non-detriment finding.

21. The May 2, 2006 letter from La Molina to USFWS does not constitute a non-detriment finding. First, as a general matter, just stating that exports are not detrimental, without scientific underpinnings or data, does not suffice as a non-detriment finding. Second, in this case, the letter states that the current level of exports “do not compromise the survival of the species.” This language appears to refer to the threat of extinction, which is more relevant for an Appendix I species than an Appendix II species. Trade may indeed be detrimental to a given species in the wild but not yet threaten it with extinction. The language is thus irrelevant to the question of whether the level of trade is non-detrimental to the survival of mahogany and the maintenance of its role in the ecosystem. The test for non-detriment relates to the issue of sustainability of trade.

22. The letter from La Molina of May 2, 2006 is not credible as evidence of a non-detriment finding. INRENA reported that La Molina did not have the information necessary to make such a finding as of January 20, 2006, a mere three and a half months earlier. The mahogany population study is not scheduled to be completed until mid-2007 at the earliest.

23. CITES importing countries are authorized to look behind the permits issued by any exporting country, if they have reason to question any of the findings. In my opinion, the United States is obligated under CITES and the U.S. Endangered Species Act to look behind the permits for mahogany exports by Peru. If the United States cannot confirm a

scientifically based non-detriment finding, then the United States should prohibit the import of Peruvian mahogany until a valid non-detriment finding has been made.

24. Given the absence of a non-detriment finding, the lack of any scientific data or analysis underlying the quotas, and the lack of any indication of any analysis regarding the impact of the trade on mahogany's role in the ecosystem, the United States is obligated to question the validity of the export permits issued by Peru. The United States has repeatedly examined facially valid export permits, including with regard to exports of mahogany from Brazil, and rejected such permits when they were found not to be based on valid findings. Once the United States was put on notice of the lack of validity (in terms of findings issued) of the Peruvian mahogany permits, as it was on December 17, 2003, June 28, 2004, and September 10, 2004, and once it inquired about the basis of the permits, as it did on December 14, 2004, and again, on April 12, 2006, and failed to receive any indication that a valid non-detriment finding had been made, it had both the authority and the obligation to refuse to recognize such permits.


25. The United States has repeatedly seized imports that it believed were in contravention of CITES and the ESA. For example, the United States has seized shipments of crocodile skins accompanied by facially valid but suspicious export permits.

26. If the United States as the primary importer of Peruvian bigleaf mahogany were to adhere to its obligations under CITES and the ESA, and refuse to recognize invalid export permits based on the absence of a non-detriment finding, the Peruvian authorities would need to comply with CITES by placing a moratorium on trade while undertaking and completing the scientific analyses required to make a valid non-detriment finding, including analysis of the impact of any proposed trade on bigleaf mahogany's role in the ecosystem. While this could have short-term consequences, it could benefit the conservation of bigleaf mahogany for the long-term in Peru.

27. The circumstances faced by Peru today are akin to those of Brazil, which instituted a moratorium in 2003 in order to assess the impact of the mahogany trade on the species in that country. This is not a permanent export ban by Brazil, but rather a recognition that until legitimate scientifically-based non-detriment findings can be made, exports cannot and should not be allowed.

I declare under penalty of perjury that the above statements are true to the best of my knowledge.

Date: August 4, 2006
Rome, Italy



✓ Susan Lieberman, Ph.D.