

**Remarks of
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ENFORCEMENT IN THE NEW NAFTA
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Introduction

Thank you for inviting me to discuss our views on trade and the environment and enforcement in the new NAFTA agreement.

As an investigator and the Executive Director of the Environmental Investigation Agency, I have conducted international field investigations on every continent into criminal networks dealing in illegal wood, endangered species and harmful chemicals. Before joining EIA I researched linkages between economics, ecology and human health with the Harvard School of Public Health and the New England Aquarium. I have a masters of science from the London School of Economics in Environment and Development and a BSc from Harvard University in Environmental Science and Public Policy. I am also proud to have served as a U.S. Marine.

The Environmental Investigation Agency, Inc. (EIA), a non-profit 501(c)(3) organization, has worked for over 30 years to investigate and expose environmental crimes, and advocate for tangible and effective solutions. EIA's analyses of the trade in illegal timber, wildlife, and ozone-depleting substances have been globally recognized. Our investigations, starting in the late 1980s, played a leading role in instigating the international ban on ivory trade, and more recently, the timber annex to the Peru Free Trade Agreement and the 2008 amendments to the U.S. Lacey Act. Last year EIA pinpointed the origin of the biggest unsolved environmental crime in recent history, about 10 billion tons in illegal global warming emissions.

EIA works with local partners to document the environmental and social impacts of environmental crimes, including in Mexico, Canada and the United States. Our experience has shown us unequivocally that the most destructive and most difficult crimes to fight are those that are inextricably linked to international trade, whether it's trade in endangered species, illegal logging, illegal fishing or illegal emissions and that any solution therefore requires action and cooperation from both producer and consumer nations involved in that trade. Crimes driven by local demand can, when there is political will, be solved locally, while international crime, driven by international trade, overwhelms the best local efforts to do so.

It is a fact that an overall increase in trade means an increase in both legal *and illegal* trade. It makes sense that as free trade agreements seek to remove barriers to trade and increase market access as well as profit potential that the illicit trade will flourish along

with legitimate business operators. For example, after the US-Singapore FTA went into effect in 2003, we documented a 62% increase in the trade of illegal ramin – a precious wood banned for export, yet being stolen from the megadiverse forests of Indonesia – transiting Singapore en route to becoming baby cribs and other wood products in the United States. This pre-dated the 2008 amendment of the Lacey Act in the United States, which became the first law in the world to prohibit the trafficking of stolen timber.

The new NAFTA contains significant changes which attempt to address such environmental concerns:

Prohibition of Illegal Take and Trade of Plants, Wildlife and Marine Resources

If the agreement is ratified, it will be the first time in history that a multilateral trade agreement contains the principle that is essential to counteract the negative effects of liberalizing trade: to forbid the trade in illegally taken natural resources. This principle is vaguely worded in the new NAFTA, but it does reflect the intent of an emerging new standard that is absolutely critical for the future responsible management of the world's environment.

The agreement requires enhanced shipping inspections to interdict illegal wildlife trade and requires parties to treat transnational wildlife trafficking as a serious crime. It includes commitments by the parties to protect domestic fauna and flora, strengthen governmental capacity for conservation, and share information on strategies and best practices for combating illegal trade in wildlife and wild plants. And while the text does require the parties to “take measures to combat and cooperate to prevent” trade in products taken in violation of the laws of the source country, it unfortunately does not commit to “prohibit” such trade, as well as the possession and transport of such products. In addition it should include mandatory commitments related to the transshipment of illegally traded or taken products, as well as inclusion of concerted demand reduction efforts for wildlife products and commodities which are grown or manufactured unsustainably or at great cost to local wildlife populations. Demand reduction is a critical piece of trade-related conservation efforts. Finally, the effectiveness of any commitments to curb illegal wildlife/natural resources trade and protect wildlife will hinge entirely on their implementation, and the vague wording of these provisions increase this concern. New laws and/or regulations may be required, and sufficient resources dedicated to capacity building and enforcement are critical.

For the new NAFTA to be part of this positive global movement toward shutting down the market for stolen natural resources, it must result in clear prohibitions on such illegal trade as well as strong sanctions, penalties, and other actions that will facilitate enforcement as well as deter future trafficking in poached or illegally harvested species. If fully implemented and strongly enforced, this commitment *could* signal that even free trade agreements will say no to stolen forests, fish, and endangered species, which would be a great step forward.

Serious Enforcement Concerns

I say *could* and *would* rather than *can* and *will* because much depends upon the willing of the US and other nations to strongly and effectively implement and enforce this provision. This is far from given in light of the final language agreed and the amount of discretion repeated multiple times throughout the chapter and this particular provision.

The Forest Annex to the Peru Free Trade agreement gives a window into these concerns as well as the value of enforcement when it is able to be properly implemented. Over the past year, USTR's actions to follow through deserve significant appreciation. On January 4th of this year, the United States Trade Representative requested the first ever consultations for a violation of a trade agreement's environment chapter. This came in response to the Peruvian government having removed the independent status of its agency to control illegal logging, OSINFOR, by relocating it from under the Council of Ministers to within the Ministry of Environment. EIA and others pointed out at the time that this violated the environmental chapter of the US-Peru free trade agreement.

Peru's decision to return OSINFOR to the Council of Ministers was an encouraging and positive first step toward empowering OSINFOR to perform its essential function in the fight against illegal logging in Peru. However, much more is needed to support and strengthen the work of OSINFOR and other important forest and environmental agencies, including the Peruvian Tax and Customs Authority (SUNAT), public prosecutors, and Regional Forestry and Wildlife Authorities. Further, Peru's national and regional governments must take significant steps to get at the root causes that allow illegal logging and the trade of illegal timber to persist at such high levels.

While an example of successful enforcement, it is also notable that this enforcement step came ten years after the finalizing of the US-Peru FTA and resulted in a return to a (preferable) status quo, rather than the significant improvement required to protect the Peruvian forests and the American consumer from financing destruction and violence.

Other modernizing provisions, with one glaring omission.

The new NAFTA includes several other welcome new environmental initiatives e.g., to reduce marine litter, a prohibition on commercial whaling, and enhanced language on IUU and sustainable fisheries management.

One glaring omission, however, is climate change. A trade agreement that liberalizes trade and does not take specific measures to address climate change will worsen it. This agreement does nothing to address climate change directly. It is a willful act of avoidance, because even entirely pro-business measures such as incentives for renewable energy technology are absent despite press reports that other parties in the negotiations were willing, even eager, to engage in such measures.

Finally, despite changes aimed at lessening environment and labor concerns over investor state dispute settlement (ISDS) provisions, the principle remains, and with it a serious threat to the efforts of individual countries to pass new measures to protect the

environment. The effort to limit the negative impact of ISDS on the environment is severely undermined by a total carve out for the very industries that are of most environmental concern: the fossil fuel sector. There may be good arguments for ISDS measures, but they do not include protecting the environment. If that is the goal, they should be eliminated.