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AHEC Comment on draft EU Deforestation Law

A positive initiative but geolocation requirement needs adaptation to avoid discrimination against non-industrial forest operators supplying diverse hardwood products

The EU Anti Deforestation legislation, first published as a draft regulation in November last year, is nearing the final stages of the EU law-making process. The law has to be agreed by both the EU Council of Ministers and the European Parliament. On 28 June, the EU Council of Ministers - representing the governments of all 27 EU Member States – reached consensus on the text. It now only needs to be endorsed by the European Parliament which is usually more inclined than the Council to implement far-reaching environmental laws. A final version of the law may well be agreed during the so-called "Trilogue" - an informal tripartite meeting on legislative proposals between representatives of the Parliament, the Council and the Commission – scheduled for September.

In principle, this is just the sort of law that the U.S. hardwood sector would wish to support. It aims to remove the products from deforested land from the EU market. Any form of deforestation is anathema to an industry built on sustainable use of hardwood forests and one which is most directly threatened by conversion of these same forests to other uses. The preamble to the legislation makes clear that the major driver of deforestation is not demand for wood products, but that "agricultural expansion drives 90% of global deforestation". The law is, in theory, built on the concept of risk-based due diligence pioneered by AHEC in the Seneca Creek studies and which was the foundation of the EU Timber Regulation (EUTR). It extends this powerful concept to control trade beyond timber to include agricultural commodities most implicated in deforestation – beef, soy, palm oil, and coffee. The need to develop mechanisms to avoid discrimination against smaller producers and SMEs is clearly stated in the preamble to the law.

The definition of "sustainable harvesting operations", evidence for which according to the first draft Regulation would be mandatory for all forest products placed on the EU market, would have actively discouraged more intensive management, reliance on monocultural plantations, and "large clear-cuts". While this definition was, quite rightly, removed from the draft text agreed by the European Council since it does not align to internationally recognised definitions of sustainable forestry, it strongly implies that the architects of this Regulation are actively seeking to encourage the type of low intensity management of semi-natural forests already typical in U.S. hardwood forests.

Discrimination against low intensity small landowners and producers:

Unfortunately, however, there is one aspect of the current draft law that presents a very significant technical obstacle exactly to this form of low intensity forest management, particularly in small-scale family or community owned forests. It will, in practice, mean that larger scale and higher intensity

industrial forms of forest management will continue to be favoured in supply of forest products to the EU.

We believe this problem can be readily resolved with just a minor adjustment either to the definitions, or the procedures required by the regulation.

The problem arises from the so-called **"geolocation"** requirement under Article 9 of the draft Regulation. Article 9 sets out the information that operators must "collect, organise and keep for 5 years from the date of placing on the market" to demonstrate that products are free of deforestation and forest degradation and produced in accordance with the relevant legislation of the country of production. It is the information deemed necessary to reliably assess risk, and therefore required irrespective of the underlying level of risk in the country or region of origin. It includes information already familiar in EUTR (e.g. species, trade names, quantities, immediate supplier details), alongside "adequately conclusive and verifiable information" that the relevant products are deforestation-free and legally produced.

But in contrast to EUTR, where products only need to be tracked beyond "country of harvest" where there is risk of illegality, Article 9 of the draft Regulation requires that operators collect information on "geolocation of all plots of land where the relevant commodities that the relevant product contains or has been made using were produced, as well as data or time range of production". It goes on to note that "Where a relevant product contains or has been made with relevant commodities produced in different plots of land, the geolocation of all different plots of land shall be included". A "plot of land" is defined in the draft Regulation as "within a single real-estate property".

At first sight, this may this seem reasonable. The need for traceability back to precise place of harvest might appear to be an essential part of any legislation designed to ensure no products from deforestation are placed on the market. Indeed it should present no obstacle in those instances where individual harvests are sufficiently large, or sufficiently homogeneous, to pull together commercial consignments of the specific wood species and grades demanded by their EU customers. Providing data on the "plot of land" should certainly be an easy matter for the managers of industrial plantations – where each harvest produces a consistent species and grade of timber. The same is true for managers of state-owned concessions in boreal areas and the tropics, where forests are more diverse, but where each plot of land will be at least 1000 hectares and sometimes extend to millions of hectares. Indeed, a prime example of who would benefit from such a system are large state- owned enterprises where the state also owns the timberland—such as Russia where "ownership" of millions of hectares of forestland are vested in one "single real estate property"—the Russian government.

However, a major problem in providing geolocation data arises where there is harvesting of a diverse forest with highly fragmented ownership. Just the type of low-intensity forestry best adapted both to carbon storage and to supporting rural livelihoods. These are exactly the conditions that prevail in the U.S. hardwood sector. More than 90% of U.S. hardwood supply derives from low-intensity harvesting of diverse semi-natural forest by non-industrial owners, mainly individuals and families. There are around 9 million family forest owners in the United States, each on average holding less than 10 hectares of land and harvesting once in a generation. Each harvest produces only a small volume of timber, and that small volume is so diverse that it is destined for large range of applications. Each individual plot of land will only make a very small and transient contribution to the supply base.

The situation is well summarised by Judd Johnson, Editor of the *Hardwood Market Report* and a respected analyst of the American hardwood industry for the last thirty years:

"I recently attended a Woods Walk and Woods Talk program conducted by the University of Tennessee. Inside the woods in a section of bottomland hardwoods stood a cherry bark Red Oak tree about 18" diameter. About 20' away from the Red Oak tree was a White Oak tree approximately 3" in diameter. Trees in that part of the forest were approximately 50 years old – even the 3" tree. We walked maybe 50' further where the ground elevation increased approximately 18", and that was enough to change the conditions from bottomland hardwoods to upland hardwoods"

Harvesting in a forest like this inevitably produces a huge range of products, each in small volumes and destined for different mills. According to Mr. Johnson:

"Hardwood timber can be purchased by a sawmill or timber merchant. Ultimately, sawmills will not process all the timber harvested from a purchased tract of timber. Small diameter and low quality trees typically are merchandised to paper, pulp, and/or chip mills. Some logs that might be spectacular in size and quality are species of limited commercial value in grade lumber markets. These logs will also be merchandised to paper, pulp, or chip mills, or perhaps to an industrial mill designed to produce material for wood packaging and pallets. High quality logs of species that are fashionable – Red Oak, White Oak, Ash, Cherry, Hard Maple, Soft Maple, Birch, Hickory/Pecan, Walnut - can be merchandised to veneer manufacturers. High quality White Oak logs can be merchandised to stave manufacturers and veneer manufacturers".

Because harvest volumes from each plot of land are so small, a typical hardwood mill needs to purchase logs from as many as several hundred forest owners each year within a 25 to 150 mile radius. The following year, that same mill will purchase from a different set of several hundred owners. Just to take one example, Mr. Johnson reports a recent interview with the President of a company operating three sawmills in Indiana with annual production of around 30 million board feet (71,000 m3), including a lot of quartersawn White Oak and thick Red Oak and White Oak, along with Walnut.

"This one company averaged about 400 timberland transactions per year and does not anticipate purchasing timber from those same landowners again, as the ownership will almost certainly change before there is additional mature timber to harvest from those properties again".

The logs delivered to the mill, even from a single harvest, are comprised of different species, different sizes – both in terms of diameter and length – and different qualities, colors, and textures. Notably, just as logs entering the mill are varied, each individual log will yield multiple boards of various grades. When logs are processed, the mill must sort the resulting lumber by species, grade, length, and thickness.

The sorted lumber develops on an accumulation basis until a bundle quantity is collected. Multiple bundles are required to compose the volume needed for a single container of lumber for export. It is not uncommon for this quantity (container) of lumber to be accumulated from numerous shifts - using many different parcels of logs. There may be over 100 sort combinations on the green (pre-drying) sawmill grading line alone. The wood may be sawn in a variety of ways for different markets and customers; plainsawn or flatsawn, quartersawn, or rift sawn.

Under the current draft legislation, even a small U.S. hardwood mill would likely be under an obligation to provide a list of at least several tens, and probably hundreds, of geolocations to identify the "plots of land" from which wood in each individual consignment might be derived. An exporter

operating a concentration yard – purchasing from a range of sawmills and where additional sorts are often made to ensure each customer is supplied with wood of specific species, quality, size, and color – will be required to provide a list of several hundred, perhaps even thousands, of plots of land with each consignment.

In practice, linking all these geolocations with individual consignments would quickly overwhelm the management systems of even the largest most sophisticated companies, let alone the relatively small, often family-run, enterprises that predominate in the U.S. hardwood sector. Contrast this situation with a large industrial operation, dependent on state concessions or company owned lands, where each "plot of land" extends to thousands of hectares, and each harvest comprises single-aged monocultures. It should be obvious this type of large industrial operation gains a clear competitive advantage from the geolocation requirement as currently set out in the draft EU law.

If the regulation is adopted in its current form, the only American hardwood lumber likely to be available to EU buyers will be the around 10% of production from state-owned forest and the few areas of large industry lands. Log exports will be less affected, and in fact will be encouraged at the expense of lumber exports as the need for sorting and grading is much less. While AHEC recognizes and supports the rights of individual land-owners and the industry to export logs, we believe that legislation that effectively cuts out local rural businesses from the supply chain, rolls back years of effort to add value closer to the source, and requires the less efficient shipment of weighty unprocessed wood fibre as the only option available hardly seems a good outcome either from an environmental or a rural development perspective.

Proposed Solutions:

These problems could be quite readily resolved through some minor amendments to the EU's legal text. There are a couple of options:

- The requirement to collect geolocation data, currently included under Article 9 "Information requirements" could be shifted to Article 10 "Risk Assessment". This would mean that the geolocation data was not a mandatory requirement for all products placed on the EU market. Instead it would only be required for those countries and/or regions not benchmarked as low risk by the EC. This would be a closer match to the existing EUTR requirement, that forest products only need be tracked back to the point of origin (whether country, sub-national region, or individual forest management unit) to the extent necessary to demonstrate negligible risk.

- The mandatory requirement to provide geolocation data could be retained under Article 9, but the terminology surrounding "plot of land" could be amended so that it is less discriminatory for small-scale non-industrial forest operations in diverse hardwood forests. It is worth observing here that the regulation's current definition of a "plot of land" as a "single real estate property" really should be looked at again, irrespective of concerns about non-industrial owners, because it does not work at all well in those many countries, particularly in tropical and boreal regions, where ownership of all, or most, forest land is vested in the state. As it stands, this definition opens the door to the state forest area of entire countries, or at least provinces within those countries, being identified as a single "plot of land". Rather than linking to a "single real estate property", the definition of "plot of land" needs to be adaptable to the wide range of circumstances prevailing in supply of the regulated commodities. For non-industrial forest owners, a suitable definition would be to a

specific jurisdiction, co-operative, or community where there is a demonstrably low risk of illegal harvest or deforestation.

Either adjustment would significantly reduce the potential for discrimination against small non-industrial forest operators inherent to the current draft. On balance, AHEC would favour the latter approach since it better maintains the underlying concept that the law should aim towards universal application of measures to identify provenance from all sources, while ensuring fair competition between large industrial and small non-industrial operators, and also promoting innovative and effective forms of verification at jurisdictional level.

On the last point, AHEC is currently facilitating development of a new certification framework specifically designed for low-intensity non-industrial hardwood operations. The framework is based on third party assessment of risk at jurisdictional level (individual state in the case of US) in accordance with a "Jurisdictional Risk Assessment" (JRA) standard which will assess specific risk of illegality, deforestation, forest degradation, plus non-conformance to a wider range of sustainable forestry principles. The certification system links with ideas pioneered in the EU FLEGT initiative to build robust governance at jurisdictional level. It requires and builds on increasingly accessible and good quality forest inventory data. It also links with a World Forest ID project to prepare a comprehensive database of US hardwood samples from across the US for Stable Isotope Ratio Analysis (SIRA). This will allow a regular check of the overall integrity of the system.

As currently drafted, the new EU regulation would create a severe technical barrier to trade for the majority of small non-industrial forest operators and suppliers of hardwood lumber in the United States. But with just minor amendment, the regulation would both encourage more widespread adoption of an innovative certification framework which will improve data quality and transparency and ensure targeted risk mitigation in areas where there is a preponderance of non-industrial forest owners delivering wood from diverse hardwood forests. At the same time, the U.S. hardwood sector will be able to continue to play an important role in reducing environmental impact and enhanced carbon storage in joinery, furniture, and other European market sectors where American hardwoods form a key component of the supply base.