

Mahogany catch 22

A first person account of one trader's navigation of CITES regulations

by
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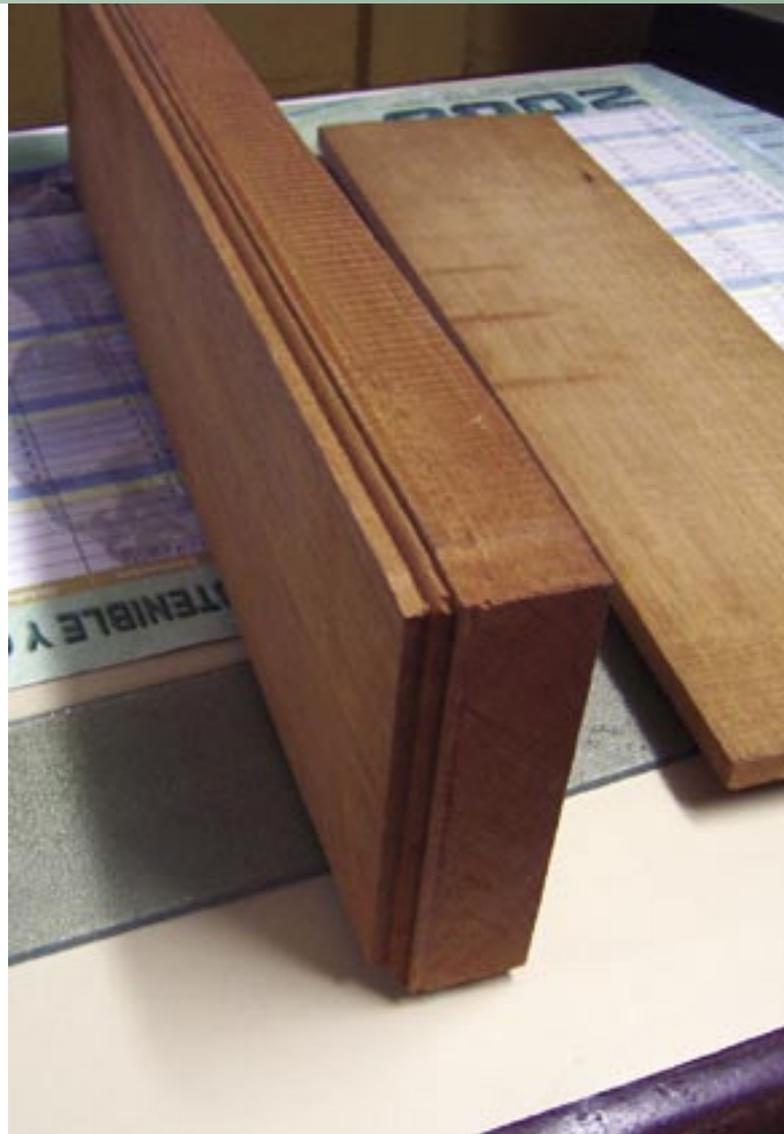
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I AM A US CITIZEN working in Nicaragua, exporting tropical lumber. On 21 June 2006, the Nicaraguan government passed law 585, which is comprised of about 16 articles. One of the articles states that the Nicaraguan government will no longer permit the exportation of sawn lumber. According to this new law, all species of lumber must now be processed to 'second transformation' before being exported from Nicaragua. The supposed purpose of this particular article is to force an increase in Nicaraguan employment, as well as to export a 'valued added' product.

There are numerous problems that have been caused as a result of this new law. One problem is that CAFTA (the Central American Free Trade Agreement) prohibits 'export restrictions', which means that a partner-country cannot allow the export of a CAFTA-listed product in one form, but then disallow it to be exported in another form. My business partner and I came to Nicaragua because 'Sawn Tropical Lumber' was listed in the Nicaraguan catalog of CAFTA products. Only after making a large investment in the purchase of mahogany (*Swietenia macrophylla*) logs were we told that we were unable to export sawn lumber under the new law.

Most exporters of sawn lumber do not have the knowledge, the machinery or the market connections for manufacturing and selling wood furniture. It would take months to be able to obtain these prerequisites, assuming the exporter was willing to make that transition. However, the Nicaraguan government did not provide any type of grace period, nor a grandfather clause, so that exporters could gradually transform themselves into fabricators/sellers of furniture, or else simply pull out of their existing investments.

Another problem has been that 'second transformation' has never been officially defined, even nine months after the passing of the new law. Realizing that there must be a state of processing somewhere between a 'finished product' (like a chair or a door), and sawn lumber, the Institute of National Forestry (INAFOR) of Nicaragua last year was showing samples of what they would consider the minimum qualification for 'second transformation'. However, no one in the government has given a clear definition in writing—despite many requests—for that type of absolute clarity. The photo above is of the mahogany samples that were being shown by INAFOR last year to illustrate the minimum processing required to qualify for 'second transformation', to



Molded or sawn: Minimum processing required for export from Nicaragua.
Photo: D. Brignole

be judged by the *delegados* (agents) who are charged with inspecting lumber destined for export.

This created another problem. The CITES authority in Nicaragua (MARENA) stated that they would not be issuing CITES certificates for the export of mahogany processed to this minimum level of 'second transformation'. Their reasoning was that—although sawn mahogany requires a CITES certificate in order to be traded internationally—mahogany that is in 'second transformation' is no longer 'sawn lumber', and therefore does not require a CITES certificate.

Not wanting to take the risk of shipping a container of mahogany to the US (our principal market) to have it be refused entry on the basis that it did not have a CITES certificate, I decided to first ensure that this type of wood processing qualified mahogany as exempt from needing a CITES certificate as MARENA had indicated it would be. I contacted our import broker in the US and asked him if mahogany in 'second transformation' required a CITES certificate. Needless to say, he did not know what 'second transformation' meant (it seems very few people do). He



Getting started: a two-year old mahogany plantation developed on a former banana plantation in Machala, Province of Oro, Ecuador. Photo: J. Leigh

said that he believed we would still need a CITES certificate, and sent me a copy of the ITTO book *Making the mahogany trade work*, which contained a host of contacts related to the international trade of bigleaf mahogany.

I should point out that exporting mahogany planed on the top surface and both sides, with a molding edge on the top two edges, is not what we ideally wanted to do. We had purchased that lumber at a price that allowed it to be sawn and shipped, and then sold at a price which would earn a reasonable profit.

I sent emails to over 40 of the contacts, including the CITES Secretariat in Switzerland, the International Tropical Timber Organization (ITTO) in Japan, the International Wood Products Association (IWPA), and the World Wildlife Fund (WWF). In response, I was sent copies of the CITES resolution which states that mahogany only requires a CITES certificate when it is in the form of sawn lumber, logs, plywood and veneer. I was also sent copies of the relevant sections of the internationally agreed Harmonized System of Customs Classification codes (HS), which defines various types of processing and assigns code numbers to them. The HS codes clearly state that 'sawn lumber' is classified as code 4407, while code 4409 (moldings) is "... lumber that has been continuously shaped along any one of its edges ...". The mahogany that we were hoping to export would have two continuously shaped edges, therefore defining it (according to the HS) as moldings and not sawn lumber. And since the CITES resolution on the listing of

mahogany does not apply to moldings (or other finished products), we were informed that if the rules were strictly interpreted, we should not require a CITES certificate.

I should point out that exporting mahogany planed on the top surface and both sides, with a molding edge on the top two edges, is not what we ideally wanted to do. We had purchased that lumber at a price that allowed it to be sawn and shipped, and then sold at a price which would earn a reasonable profit. But now we were being forced to incur additional labor costs, plus a significant loss of wood (in the planing and edging) which we had not anticipated. In addition, our buyer did not want to purchase moldings, so he was planning on cutting off the molded edges—which would result in a further loss of wood. And, of course, we would be paid less for it. However, at this point, we were just trying to recover our investment. We had purchased about 2000 m³ of mahogany logs. If we could successfully ship this 'processed' mahogany to the US, we might at least break even—which is certainly better than losing the entire investment. But we did not come to Nicaragua to conduct a zero-profit business, nor a money-losing enterprise. And apparently Nicaragua was not concerned with abiding by the requirements of CAFTA, nor were they concerned with causing the loss of foreign investments, nor the resulting loss of foreign investor confidence.

Around the time that I was receiving confirmation that mahogany moldings should not require CITES certificates,

I learned that another Nicaraguan exporter had sent four containers of this type of mahogany to the US—but they were being held in the port of Miami because they did not have CITES certificates. I contacted the US Department of Agriculture (USDA) and the US Department of Trade (USTD), and asked what the problem was. They told me that they were in discussions with the US Department of Fish and Wildlife (DFW), as well as the Department of Customs and Border Patrol (CPB), and were deciding if they should allow the import of this type of processed mahogany in the absence of CITES certificates. I forwarded to them all the materials which I had been sent by the CITES Secretariat, ITTO, the IWPA and others, and explained that this type of processing clearly falls into the description set forth in HS Code 4409.

The US authorities told me that they needed to know "how these wood products would be used", as well as the "end purpose" for this type of transformation of the lumber before deciding whether to allow it to enter the US without CITES export permits. I told them that as far as I knew, the language of the CITES regulations does not include anything about 'final use' of a product, nor of the 'purpose' of a particular transformation of lumber. And, since the HS and CITES are based on international agreements or treaties, I assumed that the US would adhere to them. However, I had also been told by the CITES Secretariat, as well as ITTO and the IWPA, that each partner country is allowed a margin of interpretation and can apply the CITES regulations as they deem appropriate within the framework of the Convention.

Eventually—after approximately two months—the US decided to refuse import of this type of mahogany boards if they were not accompanied by CITES certificates. They told me that as far as they were concerned, these boards still qualify as HS Code 4407—sawn lumber—because it did not

appear that the boards would be used as is. They essentially said that if it is not a recognizable product—like a door, a table, floor boards or panelling—then it is still sawn lumber. I admitted that we were not processing the boards in this particular fashion with the intention of making a useable product. We were simply abiding by the new Nicaraguan law which requires this minimum transformation in order to qualify for export. And we believed that this particular transformation should be classified under HS Code 4409, thereby not needing a CITES certificate. But the US authorities had another concern: people might create a molding edge on their sawn lumber simply to avoid getting a CITES certificate. The issuance of CITES certificates serves as a way of ensuring that mahogany has been obtained legally and sustainably. If one could avoid the requirement for a CITES certificate simply by carving a molding edge onto their sawn lumber, they might be able to obtain and ship illegal mahogany.

Ultimately, what matters most is that the country of export and the country of import follow the same standards. If the US is requiring CITES certificates, then Nicaragua should be issuing CITES certificates—otherwise international trade is impeded. So I asked CITES, ITTO and IWPA to contact Nicaragua’s MARENA and ask them to begin issuing CITES certificates for mahogany, even if it met their requirement of ‘second transformation’. Fortunately, MARENA agreed to begin issuing CITES certificates to all mahogany exports since the US was requiring it. Part of this new flexibility might have something to do with changes in the Nicaraguan government. Former President Enrique Bolaños finished his term on 9 January 2007, and Daniel Ortega was re-elected as President of Nicaragua. Although the term ‘second transformation’ has still not been officially defined, INAFOR has stated that they will allow mahogany boards to be exported with only the two faces and two sides planed—without the requirement for a molded edge. This is better, but still not ideal. We will still have some wood loss, as well as additional processing costs. But at least we can deliver a product to our US buyer that will not require the edges to be cut off by both of us, which will allow us to get a better price for our Nicaraguan mahogany.

In the end, it became clear that the international trade of mahogany is getting more and more difficult. As an endangered species, there will always be restrictions, limitations, and conflicting policies between countries regarding its trade. In countries such as Nicaragua, many of the indigenous communities rely heavily on the sale of timber, and they believe that the government should have no authority over indigenous areas. Moreover, the economic constraints of a third-world government make it impossible to adequately patrol the forest, so there will always be a degree of illegal activity. This illegal activity affects those of us who want to conduct a legal and sustainable business. Nicaraguan law 585 (which includes a number of moratoriums and other restrictions) is a demonstration of efforts, as yet poorly executed, to control such illegal activity. However, due to uncertainties in implementing the new law, illegal forest activity has actually increased recently, while those of us working legally have had to completely stop operations for nine months while problems such as those related here were sorted out.



Forest giant: a mahogany seed tree in a forest concession in the Department of Madre de Dios, Peru. Photo: W. Nalvarte/CNF Peru

The efforts of CITES to monitor the international trade of bigleaf mahogany have unfortunately led to one more political hurdle to overcome in the trade of this species between countries. Perhaps the CITES mahogany listing would be more effective if it applied to all products (including finished products). Only then would there be an accurate representation of how much international trade is occurring in this particular species, and there would not be disputes over the interpretation of definitions.

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I would like to express my gratitude to Milena Schmidt of CITES, Steven Johnson of ITTO, Cliona O’Brien of the WWF, Brigid Shea of the IWPA, and David Brooks of the Office of the US Trade Representative in helping sort out this issue. It can be difficult doing business in countries where government decisions often seem unreasonable and unproductive. It is nice to know that there are helpful and knowledgeable people out there that can help resolve some of the problems.