



BEIJING BRUSSELS CHICAGO DALLAS FRANKFURT GENEVA HONG KONG LONDON LOS ANGELES NEW YORK SAN FRANCISCO SHANGHAI SINGAPORE SYDNEY TOKYO WASHINGTON, D.C.



## 美国《雷斯法案》修正案：

# 对林产品生产商、出口商和进口商的影响

2008年6月18-19日 北京

R. Juge Gregg  
RJGregg@sidley.com

# 提纲

- 背景
- 《雷斯法案》修正案概述
- 给出口商/进口商的可行建议



CHINA AND FOREST TRADE IN THE ASIA-PACIFIC REGION

IMPLICATIONS FOR FORESTS AND LIVELIHOODS

中国与亚太地区国家林产品贸易研究

AMENDMENT TO THE U.S.  
LACEY ACT

IMPLICATIONS FOR CHINESE FOREST  
PRODUCTS EXPORTERS

R. JUGE GREGG  
AMELIA PORGES



SIDLEY AUSTIN LLP  
SIDLEY

SIDLEY AUSTIN  
SIDLEY

# 背景

## No QUESTIONS A THE IMPACTS OF U.S. MARKET DEMAND FOR ILLEGAL TIMBER - AND THE POTENTIAL ENVIRONMENTAL INVESTIGATION



Seneca Creek Associates, LLC

Wood Resources International

### SUMMARY

"Illegal" Logging and Global Wood Markets:  
The Competitive Impacts on the U.S. Wood Product

Prepared for:

American Forest & Paper Assoc.

By:

Seneca Creek Assoc.  
17203 Lightfoot  
Poolesville, Maryland  
Phone: 1-202-281-1111  
Fax: 1-202-281-1112  
E-mail: [ags@scac.com](mailto:ags@scac.com)

Wood Resources International  
PMB 100  
Union, New Jersey

E-mail: [hr@wri.com](mailto:hr@wri.com)



## CRS Report for Congress

Order Code RL339

### Illegal Logging: Background and Issues

Updated May 23, 2008

Pervaze A. Sheikh  
Specialist in Natural Resources Policy  
Resources, Science, and Industry Division

China's sources for hardwood log imports reads like a "Who's Who" of countries with problems with illegal logging. Because of remote access points and the circumventing of high export taxes

# 背景

4/15/08  
3:55 p.m.

Case 1:08-cr-00279-RMB Document 1 Filed 04/15/2008 Page 1 of 6

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA :  
: Hon. *RMB*  
: :  
v. : Criminal No. 08- *279*  
: :  
: 18 U.S.C. § 545  
DANNY M. CHIEN and : 18 U.S.C. § 2  
STYLE CRAFT FURNITURE CO.,  
LTD.

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

COUNT ONE  
(18 U.S.C. § 545)

At all times relevant to this indictment, the defendant:

1. Defendant STYLE CRAFT FURNITURE CO., LTD. is a manufacturer of wood baby furniture. Between approximately January 2004 and approximately \$15 million in declared value of goods imported into the United States. Defendant DANNY M. CHIEN was the hands-on manager of the business with knowledge of the woods used in the furniture produced and their uses in the United States.
2. Defendant DANNY M. CHIEN was the hands-on manager of the business with knowledge of the woods used in the furniture produced and their uses in the United States.
3. Ramin wood (scientific name

Case No. 08-00279-RMB

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA :  
: Hon. *RMB*  
: :  
v. : Criminal No. 08- *279*  
: :  
: 18 U.S.C. § 545  
DANNY M. CHIEN and : 18 U.S.C. § 2  
STYLE CRAFT FURNITURE CO.,  
LTD.

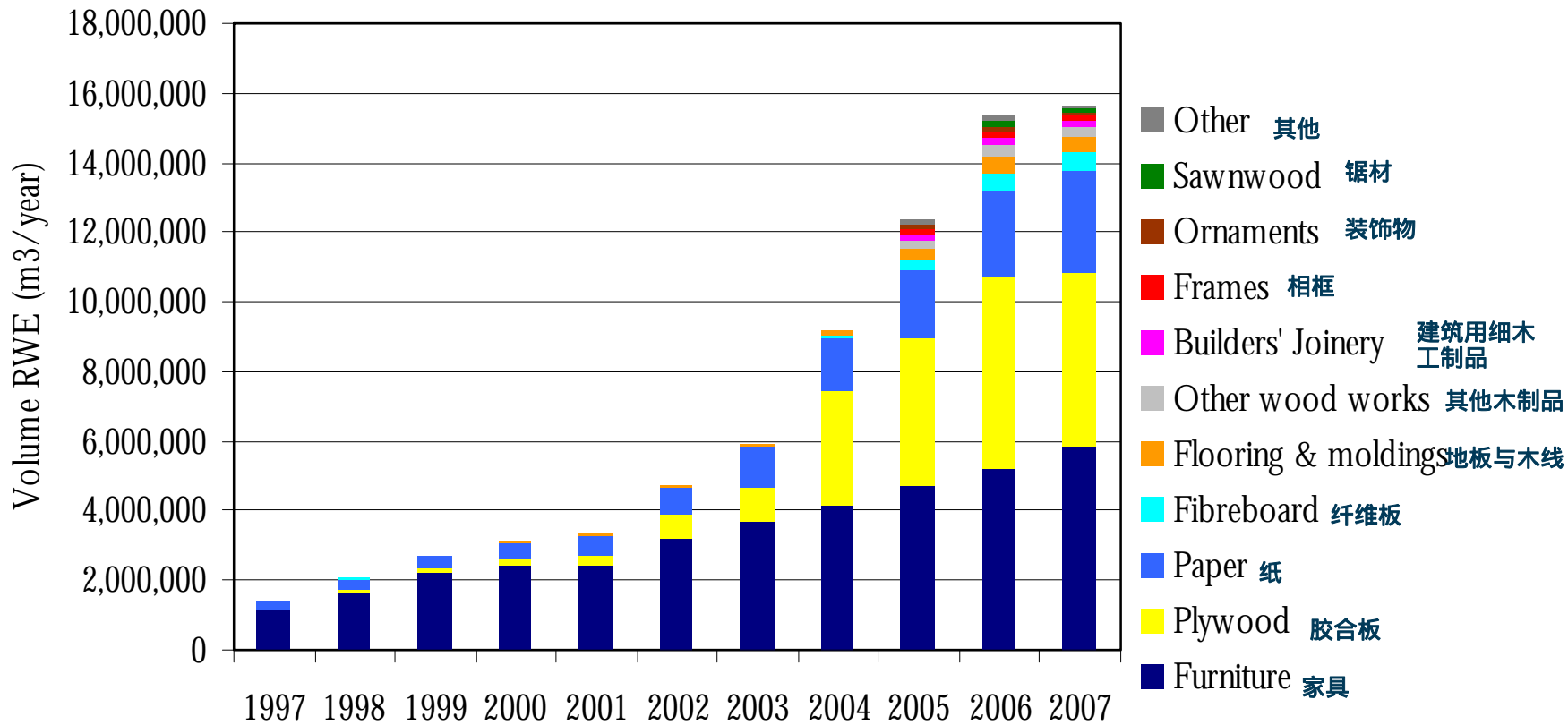
INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

COUNT ONE  
(18 U.S.C. § 545 & § 2)

# 背景

## 1997-2007年美国从中国进口的林产品



来源：中国海关数据，森林趋势编辑整理

# 《雷斯法案》修正案

- 根据《雷斯法案》提起的诉讼要求具备两种违法证据
  - “间接”违法 – 违反关于鱼类或野生生物或植物取得、占有、进口、出口、运输或销售的国外或美国州法律的行为
  - “直接”违法 - 违反《雷斯法案》污染产品进口、出口、运输、销售、取得或采购禁令的行为
- 《雷斯法案》修正案将《雷斯法案》延伸到植物
  - 涵盖“植物王国所有野生物种，包括其根、种、局部部分、产品”的交易
  - 不涉及苗木或栽培变种、常见粮食作物或其产品——如棉花、茶、栽培的竹子或成衣制品等
  - 对CITES规定的濒危物种给予额外的保护
  - 起草人计划涵盖原木、木材、家具、地板、纸张及其他下游木制品等广泛的范围

# 《雷斯法案》“采用”国外法律规范在美国交易的产品

- 规范“间接”违法的国外法律
  - 一般“保护植物”的法律
  - 规范下列行为的法律：
    - (I) 植物偷盗行为；
    - (II) 从公园、森林保护区或其他受官方保护的区域砍伐植物；
    - (III) 从受官方保护的区域砍伐植物；
    - (IV) 未经授权或违反授权砍伐植物
  - 未缴纳应缴纳的税金或立木采伐费
  - 管理植物出口或转运的法律
- 包括许多种类的法律
  - 在国家公园进行木材的非法采伐
  - 伪造海运单据
  - 未缴纳税款
  - 违反打击非法木材贸易宵禁令在夜间运输木材

# 新的申报要求

- 新的进口申报要求——2008年底
  - 产品中木材的学名
  - 进口货值
  - 木制品数量
  - 原产地国名称
  - 如果信息不明，至少在开始阶段，出口商可列出多个可能的原产地国或可能的木材种类



# 《雷斯法案》的处罚条款

- 没收

- 即使不了解间接违法，也可能处以没收货物的处罚（如不知道木材为非法采伐所得）。
- 根据《雷斯法案》第9轮决议，对非法占有的货物行为不允许“无过错所有人辩护”
- 用于《雷斯法案》重罪活动的船只、车辆、飞机或其他设备在重罪宣判后予以没收

- 民事行政处罚

- 如被告实际知道或在付出“应有的注意”后应该知道其行为违反了“间接”法律，根据违法情况处以最高10,000美元的民事处罚
- 政府可以出示证据指出被告缺乏“应有的注意”

# 《雷斯法案》的处罚条款

- 罚款与监禁
  - 如付出“应有的注意”应该了解“间接”违法——轻罪指控
    - 处以最高100,000美元罚款（单位处以最高200,000美元罚款）
    - 最长一年监禁
  - 知道违反间接法律，故意从事非法交易——轻罪指控
    - 处以最高250,000美元处罚（单位处以最高500,000美元罚款）
    - 最长五年监禁
- 可涉及走私与洗钱等法律

# 期待实施

STATEMENT OF  
EILEEN SOBECK  
DEPUTY ASSISTANT ATTORNEY GENERAL  
ENVIRONMENT AND NATURAL RESOURCES DIVISION

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SUBCOMMITTEE ON FIS  
COMMITTEE OF  
U. S. HOUSE OF  
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“H.R. 1497, LEGAL T  
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STATEMENT OF  
EILEEN SOBECK  
DEPUTY ASSISTANT ATTORNEY GENERAL  
ENVIRONMENT AND NATURAL RESOURCES DIVISION  
U.S. DEPARTMENT OF JUSTICE  
BEFORE THE  
SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND OCEANS  
COMMITTEE ON NATURAL RESOURCES  
U. S. HOUSE OF REPRESENTATIVES  
CONCERNING  
“H.R. 1497, LEGAL TIMBER PROTECTION ACT”  
OCTOBER 16, 2007

## INTRODUCTION

Chairwoman Bordallo, Represent  
Subcommittee, thank you for inviting th  
1497, the “Legal Timber Protection Act  
protections to plants, including timber i

I am a Deputy Assistant Attorn  
Resources Division (Environment Divi  
Environment Division is responsible fo  
involving environmental and natural res  
against individuals or entities that viola  
docket of about 7,000 pending cases or  
in the nation. We litigate cases arising  
natural resources statutes.

Among the environmental statu  
for enforcing is the Lacey Act, discusse  
testimony is the Environment Division’s role in criminal prosecution of Lacey Act  
violations, I should add that a number of other federal agencies are involved in the  
implementation of the Lacey Act, including the Department of the Interior’s U.S. Fish  
and Wildlife Service, the Department of Commerce, the Department of Agriculture, and  
the Department of Homeland Security.

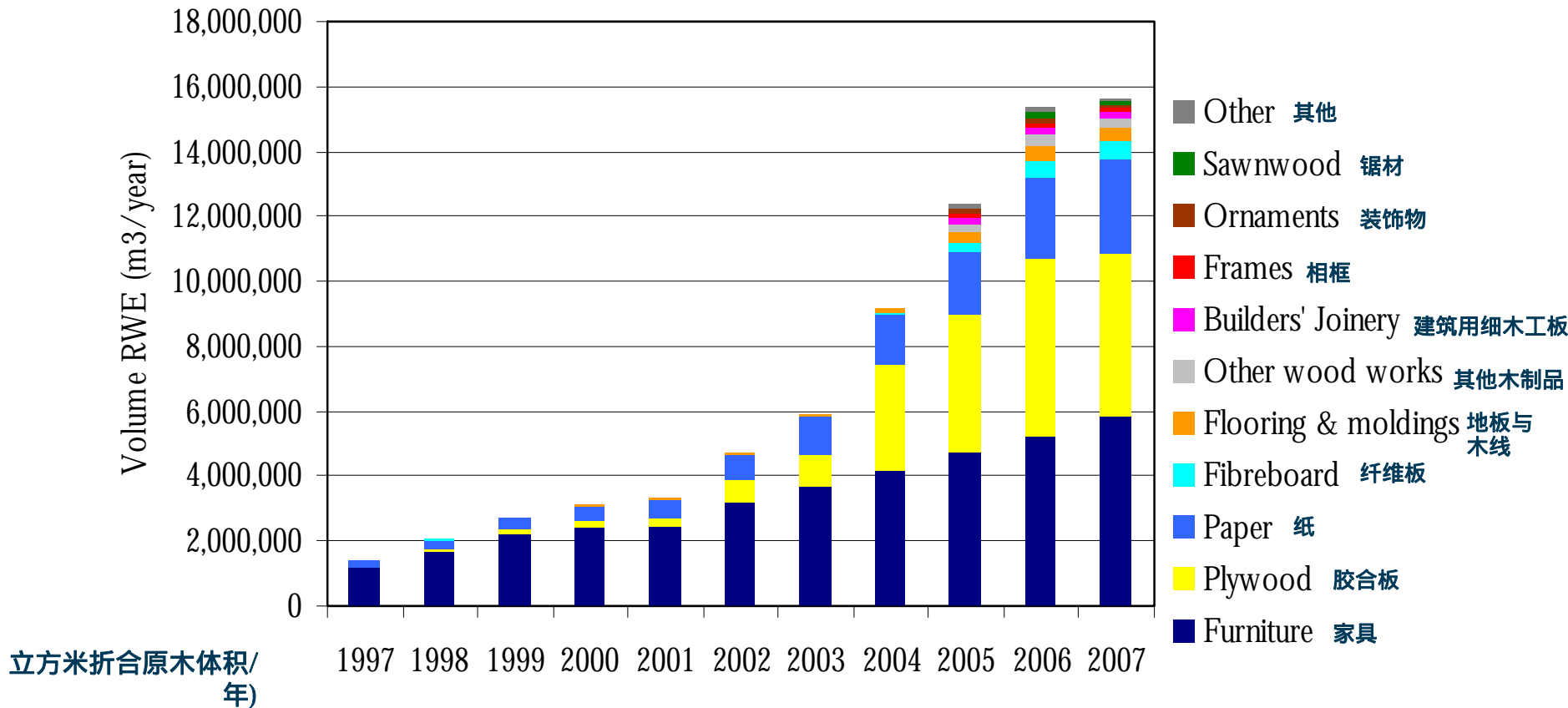
While the Environment Division has brought a number of cases to prosecute

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In general, the Administration supports amending the Lacey Act to provide enforcement agencies with adequate and clearly defined legal tools to address illegal logging and trafficking of foreign timber. Addition of such enforcement tools to address trafficking in illegal timber is consistent with the President’s Initiative and would enhance our ability to take steps against the multi-billion dollar trade in illegally logged timber. Such an amendment would support international good governance; it would

# 实施的目标?

## 1997-2007年美国从中国进口的林产品



来源：中国海关数据，森林趋势编辑整理

# 可行的建议

- 注意你的客户
  - 询问客户关于木材来源的问题
  - 根据回答,生产商可能赢得或丢掉客户
- 了解自己的木材来源
  - 实施管理程序了解来源
  - 对产品供应链进行调查
  - 取得产品并非非法木制品的保证
  - 如忽视潜在的来源问题,仍旧可能承担违反《雷斯法案》的责任
  - 忽视行业行为规范使政府更容易证明你“应该已经了解”

# 可行的建议

- **不要依赖“书面”保证**

- 《雷斯法案》某些条款适用于所有公司，无论公司是否真正了解非法行为

- **起草合同保护你的财务利益**

- 进口商可能希望只支付或占有已经清关的产品
- 生产商希望木材供应商赔偿美国政府对产品采取措施带来的财务损失

- **关注法规**

- 美国政府可能于2008年末颁布法规，提供进口申报要求相关的指南

欢迎提问！

R. Juge Gregg  
rjgregg@sidley.com  
+1-202-736-8581