

THE U.S. LACEY ACT

FREQUENTLY ASKED QUESTIONS ABOUT THE WORLD'S FIRST BAN ON TRADE IN ILLEGAL WOOD

1. What is the U.S. Lacey Act and why is it important?

On May 22, 2008, the U.S. Congress passed a groundbreaking law banning commerce in illegally sourced plants and their products – including timber and wood products. The new law is an amendment to a 100-year-old statute, named the Lacey Act after the Congressman who first championed it. While the Lacey Act has long been one of the most powerful tools for the U.S. agencies fighting wildlife crime, its potential to combat illegal logging remained untapped to date. Now the Lacey Act sets a groundbreaking precedent for the global trade in plants and plant products, acknowledging and supporting other countries' efforts to govern their own natural resources and putting in place powerful incentives for companies trading in these commodities to do the same.

2. What does the U.S.'s new law do to address illegal logging?

To address illegal logging and other illegal plant trade, the Lacey Act now does three main things:

- prohibits all trade in plant and plant products (e.g., furniture, paper, or lumber) that are illegally sourced from any U.S. state or any foreign country. [See question 3 for what "illegally sourced" means.]
- requires importers to declare the country of origin of harvest and species name of all plants contained in their products.
- establishes penalties for violation of the Act, including forfeiture of goods and vessels, fines and jail time.

3. What is "illegal" under the Lacey Act?

There are two components to a violation of the Lacey Act. First, a plant must be taken, harvested, possessed, transported, sold or exported in violation of an underlying law in any foreign country or the U.S. This constitutes an illegally sourced plant. The scope of these underlying laws that can trigger a Lacey Act plant violation is limited to those laws which protect plants or regulate the following:

1. theft of plants;
2. taking plants from an officially protected area, such as a park or reserve;
3. taking plants from other types of "officially designated areas" that are recognized by a country's laws and regulations;
4. taking plants without, or contrary to, the required authorization;
5. failure to pay appropriate royalties, taxes or fees associated with the plant's harvest, transport or commerce; or
6. laws governing export or trans-shipment, such as a log-export ban.

Second, a person or company must trade this illegally-sourced plant in U.S. interstate or foreign commerce – in the law's words, one must "import, export, transport, sell, receive, acquire, or purchase." It is only this second transaction that triggers a violation of the Lacey Act.

It is important to note that the Lacey Act does not impose U.S. law on sovereign nations. "Illegally sourced" is defined by the content of sovereign nations' own laws. The law applies equally to plants taken, harvested, transported, or exported in violation of the relevant laws of any of the 50 U.S. states as well.

4. What information must be declared and why?

The Lacey Act requires importers to provide a basic declaration to accompany every shipment of plants or plant products. The purpose of these declarations is to increase transparency about the timber and plant trade and enable the U.S. government to better enforce the law. The declaration must contain:

1. the scientific name of any species used,
2. the country of harvest,
3. the quantity and measure, and
4. the value.

5. Do the declaration requirements apply to all plant products?

No. First, the law has special clauses for complex products which commonly utilize material from a variety of countries or species. If either the specific country or the specific species are unknown for a given shipment, the law allows declarations to contain the name of each likely species of plant, and/or each possible country of origin which must include the correct country. Second, declarations for paper products made with recycled fibers do not need to name the species and source for the recycled material. Instead, they must list the average percent of the recycled content, as well as species and origin information for any non-recycled plant material also contained in the products. Finally, importers do not need to declare plant-based packaging material such as cardboard or pallets, unless the packaging itself is what's being imported. The government must review the implementation of the declaration requirement and the effect of the exclusion of packaging material after two years. Based on this review, the government may issue regulations adjusting the scope of these three categories.

6. What are some examples of a potential Lacey Act violation?

- A company in California imports a shipment of wood flooring from country X, made from timber that had been harvested without valid permits in country Y where it was cut.
- An exporter purposefully mislabels a shipment to the U.S. as less valuable species to avoid higher tariffs.
- A paper company uses pulp sourced from illegal logging practices and exports finished paper product to the United States.
- A veneer importer does not identify the correct country (or potential countries) of harvest origin for the species used in his importation.

7. How is the Lacey Act different from other existing laws and policies in consumer countries?

While the Lacey Act is rooted in the same concept of reducing demand for illegally sourced wood, it is distinct from the E.U.'s or other countries' national or voluntary schemes. The Lacey Act is a fact-based statute rather than a document-based statute. It is up to the private sector to comply as it sees fit.

In other words, a company is not required to match any one standard of legality documentation or due diligence – and, conversely, no document is a 100% guarantee of legality in and of itself.

8. What constitutes a “plant” under the Lacey Act?

A plant, as defined by the law, includes any part or derivative product of any wild member of the plant kingdom, including trees harvested from plantations. This includes all wood products, such as paper, furniture, tool handles or certain types of fabric. However, there are some exceptions:

- Live trees or other live plants intended for replanting, unless they are listed on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Endangered Species Act (ESA) or a state endangered species list.
- Scientific specimens to be used only for research, unless they are listed on CITES, the ESA or a state endangered species list.
- Common food crops and cultivars, such as corn, cotton or cut flowers.

9. How will the new Lacey Act provisions be implemented by the U.S. Government?

The U.S. Department of the Interior's Fish and Wildlife Service (FWS), with its long expertise investigating wildlife import and smuggling cases, and the U.S. Department of Agriculture's Animal Plant Health Inspection Service (APHIS), which has traditional responsibility for plant imports, will play important roles in processing declarations and investigating illegal timber import cases. The Department of Homeland Security, which controls U.S. customs and monitors the borders through Customs and Border Protection, will support this work. If federal inspectors uncover or receive evidence of criminal activity, further investigation will occur. If there is sufficient evidence that the product is illegal, the shipment can be seized. At this point, the case may be referred to the Department of Justice and/or forfeiture proceedings may be initiated.

11. HOW DID THE NEW LAW COME ABOUT?

For years, experts have pointed out that the absence of “plants” from the Lacey Act was a glaring omission. At the same time, the devastating impacts of illegal logging and associated trade for local communities, invaluable ecosystems and good governance in developing countries have been increasingly well documented. As it became clear that amending the Lacey Act would be an effective measure to address these issues, the legislation was proposed in the U.S. Congress by Representative Earl Blumenauer and Senator Ron Wyden, both of Oregon, in 2007. A precedent-setting coalition of environmental, industry, and labor groups backed these bills, recognizing the need for the world's largest consumer market to take action at home to curb illegal wood and plant product imports.

10. What are the penalties under the Lacey Act for illegal trade or mis-declarations?

Lacey Act civil and criminal penalties vary according to how much the company or individual knew about the crime, as well as the value of the good or shipment in question. The diagram below describes general categories and potential penalties; the complete text of the statute should be consulted for a precise breakdown.



WHO SUPPORTED THE LACEY ACT AMENDMENTS?

- American Forest & Paper Association
- Amazon Watch
- Center for International Environmental Law
- Conservation International
- Defenders of Wildlife
- Dogwood Alliance
- Environmental Investigation Agency
- ForestEthics
- Friends of the Earth
- Global Witness
- Greenpeace
- Hardwood Federation
- International Brotherhood of Teamsters
- National Wildlife Federation
- Natural Resources Defense Council
- Rainforest Action Network
- Rainforest Alliance
- Sierra Club
- Society of American Foresters
- Sustainable Furniture Council
- The Nature Conservancy
- Tropical Forest Trust
- United Steelworkers
- Wildlife Conservation Society
- World Wildlife Fund

12. What kind of practices constitute “due care”? What can a company do to protect itself or its business partners from problems under the Lacey Act?

Due care is a flexible concept that has been developed over time by the U.S. legal system. Due care means “that degree of care at which a reasonably prudent person would exercise under the same or similar circumstances. As a result, it is applied differently to different categories of persons with varying degrees of knowledge and responsibility” (Senate Report 97-123). Given the lack of certainty around how the court might view due care with respect to the new plant provisions, it would be prudent for companies dealing in forest and paper products to avail themselves of the wide array of tools, technologies and resources available for assessing and eliminating illegal wood from often long and complicated supply chains. Internal company policies and tracking procedures are a critical element. Steps may also include bar-code or other tracing systems; legality verification; certification under third-party schemes; stepwise programs offered by various organizations, and other innovative public-private partnership models.

13. When do the Lacey Act plant provisions go into effect?

The Lacey Act provisions are already in effect and have been since May 22nd, 2008. Importers will be required to provide declaration information beginning December 15th, 2008. Further guidance on this process will be forthcoming from the U.S. government.

14. Where can more information be found about the Lacey Act plant provisions?

The U.S. government is creating materials to guide companies trying to comply with the Lacey Act. Meanwhile, for the full text of the new law and lots of other background information, see the pages on the U.S.’s new law at www.eia-global.org/lacey.

This document is for informational purposes only. Persons seeking legal advice on compliance with the Lacey Act statute should consult with a legal professional.

