

FACT SHEET

Are You Ready for the Lacey Act?

On November 17, 2009, U.S. federal agents raided Gibson Guitar Corp.'s Nashville, Tennessee manufacturing facility. The raid was part of an investigation into the illegal trade of a rare wood species allegedly used in some of Gibson's renowned musical instruments. According to press reports, agents seized wood, guitars, and documents in the first known enforcement action under the recently amended Lacey Act. Widely covered in the media, the raid is a wake-up call to all businesses that are part of forest product supply chains that they need to heed the Lacey Act.

What is the Lacey Act? What risks do buyers, traders, and sellers of wood, paper, and other forest products face if they violate it? What can companies do to avoid becoming the subject of a Lacey Act investigation? This fact sheet provides some answers to these and related questions.

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, wood, and paper products. The new law is an amendment to the Lacey Act of 1900, named after the congressman who first championed it. While the Lacey Act has long been one of the most powerful tools for U.S. agencies fighting wildlife crime, its potential to combat illegal logging remained untapped. Now the Lacey Act sets a precedent for the global trade in plants and plant products, acknowledging and supporting the efforts of other countries to govern their own natural resources and putting in place powerful incentives for companies trading in these commodities to do the same.

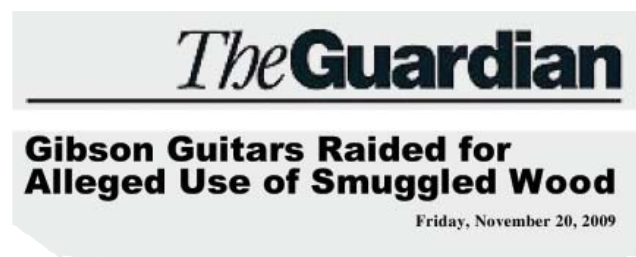
2. WHAT DOES THE LAW DO TO ADDRESS ILLEGAL LOGGING?

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

- Prohibits all trade in plants and plant products—including furniture, paper, and lumber—that are illegally sourced from any U.S. state or foreign country;
- Requires importers to declare the country of origin of harvest and species name of all plants contained in their products (a provision that is currently being phased in); and
- Establishes penalties for violations of the law, including forfeiture of goods and vessels, fines, and jail time.

3. WHEN DOES THE AMENDED LACEY ACT GO INTO EFFECT?

The amended Lacey Act has been in effect since May 22, 2008. Companies or persons caught with illegally sourced wood or plant products can now be prosecuted and have their goods confiscated. The declaration requirement of the Lacey Act is being phased in by product type.¹ Throughout this phase-in process, enforcement of the act's prohibition on trade in illegally sourced plant and plant products is already in effect for all types of products, whether or not they are on the phase-in schedule.



4. WHAT IS “ILLEGAL” UNDER THE AMENDED 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 a relevant underlying law in any foreign country or the United States. This constitutes an illegally sourced plant.

Second, a person or company must trade this illegally sourced plant in U.S. interstate or foreign commerce—in the act’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.

The Lacey Act does not impose U.S. law on other countries. “Illegally sourced” is defined by the content of a sovereign nation’s own laws. The law applies equally to plants taken, harvested, transported, or exported in violation of the relevant laws of any U.S. state, territory, or tribal government, as well.

5. WHAT ARE SOME EXAMPLES OF AN AMENDED LACEY ACT VIOLATION?

Examples of Lacey Act violations include, but are not limited to:

- A company in the United States imports a shipment of wood flooring from country X made from timber that had been harvested without valid permits in country Y;
- A company in the United States purchases paper made from pulp sourced via illegal logging practices in country Y;
- An exporter purposefully mislabels a shipment to the United States as a less valuable species in order to avoid higher tariffs; and
- A veneer importer does not identify the correct country (or potential countries) of harvest origin for the species used.

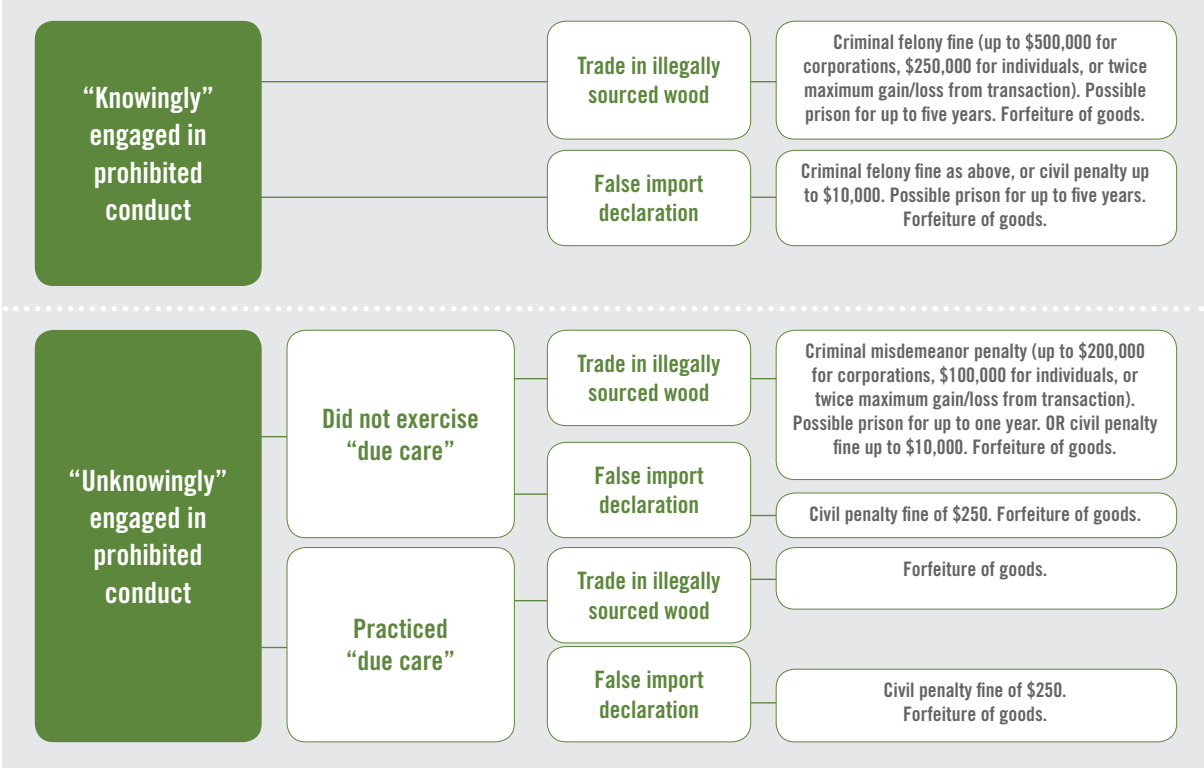
6. HOW PERVASIVE IS ILLEGAL LOGGING?

Illegal logging occurs in all regions of the world. Examples include timber theft; logging in a national park or protected area; logging CITES-listed species (Convention on International Trade in Endangered Species) without a permit; failure to pay taxes or tariffs on a shipment of logs; and taking logs without proper authorization. The extent of illegal logging varies dramatically by exporting country and species; in some countries, it is as high as 60–80 percent of harvested wood. An estimated 10 percent of annual wood imports into the United States is of illegal origin.²

7. WHAT ARE THE PENALTIES UNDER THE AMENDED LACEY ACT?

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. Figure 1 describes the general categories and potential penalties.

FIGURE 1.
PENALTIES
UNDER
THE AMENDED
LACEY ACT



8. WHAT CAN YOUR COMPANY DO TO COMPLY WITH THE AMENDED LACEY ACT?

It is each company's responsibility to exercise "due care" and understand the origin of its forest products, keeping in mind that a Lacey violation can occur at almost any point in a forest product supply chain. To help improve compliance, a company could:

- Ask its suppliers questions, such as: What are your supply chains? Can you trace them all the way back to the forest? What is the degree of illegal activity in that forest or region? Do you have proper documentation?
- Institute internal policies and procedures to track forest products. Available options may include barcode or other tracing systems, legality verification, third-party certification, stepwise programs offered by various organizations, or other public-private partnership models designed to help companies manage procurement of forest products.
- Use a robust risk management system to assess risk of illegality. Exercise extra care when procuring forest products from regions with known or suspected high rates of illegal logging.

The Lacey Act is a fact-based rather than a document-based statute. If imported products turn out to be of illegal origin de facto, this fact will override any statement or document to the contrary. Illegal products are often accompanied by forged documents. Therefore, evaluating your suppliers and developing trust in them and the forest products they provide is as important as obtaining physical papers. Means of evaluation can include:

- Conducting independent research on suppliers via on-line sources and your business contacts;
- Establishing long-term relationships rather than buying on spot markets;
- Consistently questioning your suppliers about the origin of their products and documenting their answers; and
- Making supplier and forest site visits if possible.

9. DOES CERTIFICATION MEAN THAT A FOREST PRODUCT IS EXEMPT OR ALREADY IN COMPLIANCE WITH THE AMENDED LACEY ACT?

Third-party sustainable forestry certification and legality verification systems are very good approaches for demonstrating "due care." They help demonstrate to both governments and customers that you have taken proactive steps to eliminate illegal wood or plant material from your supply chain. However, certification and verification are not required by the Lacey Act, do not serve as "get-out-of-jail free" cards, and do not relieve importers of the requirement to submit appropriate import declaration information to APHIS (Animal and Plant Health Inspection Service of USDA) or U.S. Customs and Border Patrol.

10. OF WHAT VALUE IS THE SCIENTIFIC NAME (GENUS AND SPECIES) OF PLANT PRODUCTS IN THE DECLARATION REQUIREMENT?

Scientific names of plant species are a means of obtaining precise information about the forest product being purchased. Relying on common species names is imprecise, as a single species may have a wide variety of commercial or country-specific common names. Conversely, many distinct species may share the same common name. Buyers who do not know the scientific name cannot be sure whether or not they are violating CITES or other laws that protect endangered species.

11. IS THE BEST STRATEGY SIMPLY TO STOP SOURCING FROM HIGH-RISK COUNTRIES?

Not necessarily. Examples of good and bad logging practices exist in every country. Certain high-value species and countries with long track records of illegal logging clearly warrant particular vigilance, but that means "do your homework," not necessarily "stay away." Businesses with good practices in such countries should be rewarded. The U.S. government will not be creating an official list of "high-risk" countries. No matter from which country you source, including the United States or Canada, you should know as much as possible about the wood material's origin.

12. WHERE CAN I LEARN MORE?

For more information, visit www.eia-global.org/lacey or www.SustainableForestProds.org.

Or contact:

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NOTES

1. For more information on the phase-in of the declaration requirement, visit http://www.aphis.usda.gov/plant_health/lacey_act/downloads/2008-0119.pdf.
2. For these and other facts on illegal logging, see the EIA report "No Questions Asked." Available 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 a legal professional.



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