

The Lacey Act: A tool in U.S. Efforts to Combat Illegal Logging

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Why Does the U.S. Combat Illegal Logging?

- Illegal logging robs countries, impoverishes forest communities and puts money in the pockets of criminals.
- It undermines sustainable forest management, destroying forests, watersheds and habitat.
- It unfairly competes with legal production and trade.
- Profits from illegal logging have been used to fuel conflict and purchase arms.

U.S. Efforts to Combat Illegal Logging and Associated Trade

Promoting sustainable forest management and strengthen governance

Raising awareness and building capacity through bilateral and multilateral efforts

Promoting partnerships and collaboration among governments, private sector and non-government organizations

U.S. Efforts to Combat Illegal Logging and Associated Trade

Key elements

- Consultation
- Transparency
- Capacity Building
- Partnerships
- Enforcing obligations

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Examples

- MOUs with Indonesia and China
- Asia-Pacific Regional Dialogue
- Commitments in trade agreements
- Bilateral and regional assistance for forestry
- Support for ITTO
- Support for RAFT

Lacey Act History

- Oldest wildlife protection statute in the U.S.
- First enacted in 1900
- Significantly amended in 1981
- Amended again in 2008
- Designed to combat illegal trafficking of wildlife, fish or plants

The Amended Lacey Act

- Unlawful to import, export, transport, sell, receive, acquire, or purchase certain plants that are taken, possessed, transported, or sold in violation of the laws of the United States or any foreign law that protects plants.
- Unlawful to falsify documents, accounts or records of any plant covered by the Act

The Amended Lacey Act

- Expands Lacey protection to broader range of plants
- Extends the statute's reach to encompass products, including timber, that derive from illegally harvested plants
- The amendment also introduces a requirement for a Plant Import Declaration
- Substantive provisions in effect and enforced since May 22, 2008. Declaration requirement enforcement being phased in

Definition of “Plant”

- “Plant” means: “Any wild member of the plant kingdom, including roots, seeds, parts or product thereof, and
- “Trees from either natural or planted forest stands”

Exclusions

- Plants and plant products used exclusively as packing material to support, protect, or carry another item including (but not limited to):
 - Instruction manuals, labels, pallets and crating, etc.
- “Common cultivars” and “common food crops”
 - Definitions are forthcoming
- Live plants for planting
- Scientific specimens

In plain language importers must:

- Make sure shipments were obtained legally
- Make sure shipments' documentation and records are true and accurate
- Make sure shipment is properly declared under the Lacey Act declaration requirement
- **Note: Importers will depend on exporters for some of this information**

The Plant Import Declaration

- The declaration requires basic information about the shipment: scientific name of the plant, value, quantity and the name of the country in which the plant was harvested

Does **not** require information on legality or “chain of custody”

Does **not** establish standards or require certification

What if information is unknown?

- If species varies and is unknown: Declare the name of each species that may have been used to produce the product
- If the species is commonly harvested in more than one country, and the country is unknown: Declare the name of each country from which the plant may have been harvested

Lacey Act Requirements

- A wide variety of products, to the extent that they contain covered plant products, are now covered by the Lacey Act prohibitions against trade in illegally harvested plants and plant products.
- Even if a shipment of covered plants is not scheduled for enforcement of the declaration, the Lacey Act prohibitions still apply.
- The declaration requirement is subsidiary to and supportive of the Lacey Act prohibitions.

Lacey Act Enforcement

Penalties for Lacey Act Violations:

- Forfeiture—seizure of product
- Civil Penalties—Monetary penalties
- Criminal Penalties—Fines and potential imprisonment
- Unlawful plants or products are subject to seizure and forfeiture

Lacey Act Investigation and Enforcement

Information may be obtained from a variety of sources:

- U.S. Federal Agents at the Border
- Industry Members—employees or competitors
- Foreign Governments
- International Organizations
- Non-Governmental Organizations

Initial information is always evaluated and substantiated before a full investigation is launched

Exercising Due Care

- ❑ “Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.”
- ❑ Due care “is applied differently to different categories of persons with varying degrees of knowledge and responsibility.”

Due Care: Common Sense Red Flags

- Goods significantly below going market rate
- Cash only, or lower price for goods without paperwork
- Asked to pay bribe
- Unusual sales methods or practices
- Legal tariffs or duties not included in price
- Product labeling incorrect
- Permits or paperwork facially invalid or questionable
- Unable to get reasonable answers to questions

Useful Tools To Demonstrate Due Care

- Ask questions
- Develop a compliance plan and document how you follow this plan in business transactions
- Train employees
- Visit suppliers
- Develop and follow industry standards

Goods Requiring a Plant Import Declaration

HTS Ch. 44 Headings (wood & articles of wood)

- 4401—(Fuel wood)
- 4402—Wood charcoal
- 4403—(Wood in the rough)
- 4404—(Hoopwood; poles, piles, stakes)
- 4406—(Railway or tramway sleepers)
- 4407—(Wood sawn or chipped lengthwise)
- 4408—(Sheets for veneering)
- 4409—(Wood continuously shaped)

Goods Requiring a Plant Import Declaration (continued)

HTS Ch. 44 Headings (wood & articles of wood) (continued)

- 4412—Plywood, veneered panels, except 44129906 and 44129957
- 4414—Wooden frames
- 4417—(Tools, tool handles, broom handles)
- 4418—(Builders' joinery and carpentry of wood)
- 4419—Tableware & kitchenware of wood
- 4420—Wood marquetry; caskets; statuettes
- 4421—Other articles of wood

Goods Requiring a Plant Import Declaration (continued)

- HTS 6602—Walking sticks, whips, crops
- HTS 8201—Hand tools
- HTS 9201—Pianos
- HTS 9202—Other stringed instruments
- HTS 9302—Revolvers and pistols
- HTS 93051020—Parts and accessories for revolvers and pistols
- HTS 940169—Seats with wood frames
- HTS 950420—Articles and accessories for billiards
- HTS 9703—Works of art (sculptures)

See 74 Fed. Reg. 45415 (2 Sept 2009) for additional information

For More Information:

- www.aphis.usda.gov
- www.cbp.gov
- To look up genus/species, go to:
<http://plants.usda.gov/classification.html>