



# 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. This law is an amendment to a century old statute, the Lacey Act, named 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 previously untapped. Today, the Lacey Act remains 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. Lacey Act do to address illegal logging?

To address illegal logging and other illegal plant trade, the Lacey Act 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 4 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 violating the Act, including forfeiture of goods and vessels, fines and jail time.

### 3. When did the U.S. Lacey Act plant provisions go into effect?

The Lacey Act provisions have been in effect since May 22nd, 2008. Companies or persons caught with illegally sourced wood, plants or plant products can now be prosecuted or have their goods confiscated. While the prohibition has been in effect for all covered plants and plant products since May 22, 2008, the declaration requirement of the Lacey Act is being phased in by HTS chapter according to a schedule prepared by the U.S. government. Check the Lacey Act website of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) for more information and updates on the declaration phase-in schedule ([http://www.aphis.usda.gov/plant\\_health/lacey\\_act/index.shtml](http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml)).

### 4. What is “illegal” under the U.S. Lacey Act?

There are two components to a U.S. Lacey Act violation. **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 the underlying laws that can trigger a U.S. Lacey Act plant violation is limited to 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 the illegally sourced good.” It is only this second transaction that triggers a violation of the Lacey Act.

It is important to note that the U.S. Lacey Act does not impose U.S. law on other countries. “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.

### 5. 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.

Details on how this declaration requirement is being phased-in and implemented are available from the U.S. Department of Agriculture (USDA).

### 6. Do the declaration requirements apply to all plant products?

No. First, the law has special clauses for complex products that commonly utilize material from a variety of countries and/or species. If either the specific country or the specific species are unknown for a given shipment, the Lacey Act allows import 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 is being imported.

The declaration requirement has not yet been fully phased in for all plants and plant products covered under the law. For more information on which plant products are presently covered, special use codes, phase-in updates, or any additional information regarding implementation of the declaration, please visit the APHIS website at [http://www.aphis.usda.gov/plant\\_health/lacey\\_act/](http://www.aphis.usda.gov/plant_health/lacey_act/).

### 7. What are some examples of a potential U.S. 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 or to conceal trade of a protected species.
- A paper company uses pulp sourced from illegal logging practices and exports finished paper product to the United States.
- A veneer company does not identify the correct country (or potential countries) of harvest origin for the species used in its importation.

### 8. How is the U.S. Lacey Act different from other existing or proposed laws and policies in consumer countries?

While the Lacey Act is rooted in the same concept of reducing demand for illegally sourced plants and plant products, it is distinct from the EU’s and other countries’ national or voluntary anti-illegal logging 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 obtain any one standard of legality documentation or due diligence — and, conversely, no document is a 100% guarantee of legality in and of itself.

### 9. What constitutes a “plant” under the U.S. 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 or cotton. The definitions of “common food crop” and “common cultivar” can be found on the APHIS Lacey website, [http://www.aphis.usda.gov/plant\\_health/lacey\\_act/downloads/CommonFoodCrop-CommonCultivarIllustrativeList.pdf](http://www.aphis.usda.gov/plant_health/lacey_act/downloads/CommonFoodCrop-CommonCultivarIllustrativeList.pdf).

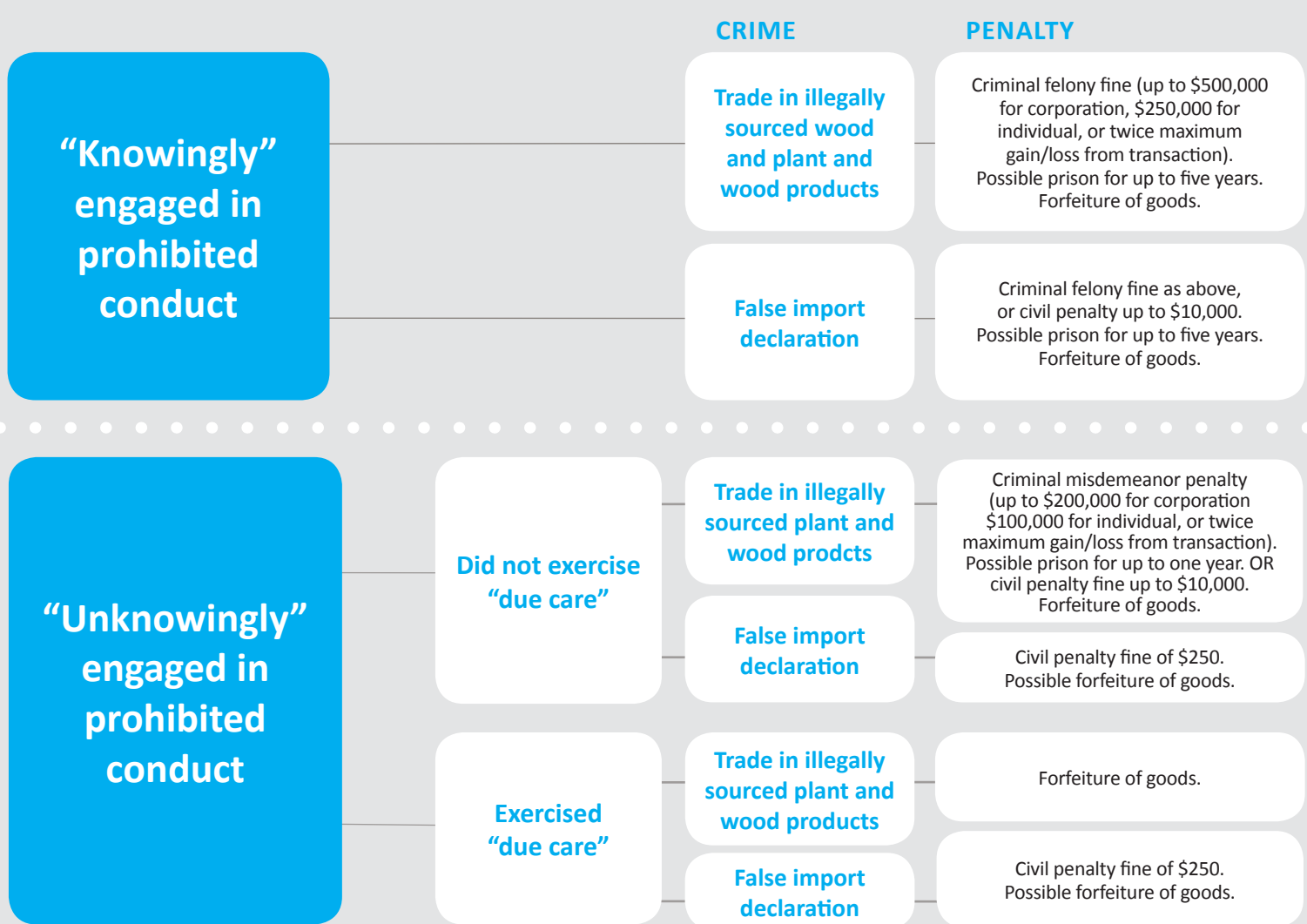
### How did the new law come about?

For years, experts had 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 had been increasingly well documented. This illegal trade was also negatively impacting the U.S. forest products sector. 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, in 2007. A precedent-setting coalition of environmental, industry, and labor groups supported 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 U.S. Lacey Act for illegal trade or false declarations?

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



## WHO SUPPORTED THE 2008 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 Hardwood Lumber Association
- 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

## 11. How are the U.S. Lacey Act provisions implemented by the U.S. Government?

The U.S. Department of Agriculture's Animal Plant Health Inspection Service (APHIS), which has traditional responsibility for plant imports, plays the primary role in processing declarations. APHIS shares responsibility for investigating illegal plant cases with the U.S. Department of the Interior's Fish and Wildlife Service (FWS), which has a long history of expertise on Lacey Act trafficking cases. The Department of Homeland Security, which controls U.S. customs and monitors the borders through Customs and Border Protection, also supports this work. When federal inspectors uncover or receive evidence of criminal activity, further investigation occurs. 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.

## 12. What kind of practices constitute "due care"? What can a company do to protect itself or its business partners from violating the U.S. 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 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). 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 include bar-code or other tracing systems; various new systems of wood identification and tracking including isotopes and DNA analysis; legality verification; certification under third-party schemes; stepwise programs offered by various organizations, and other innovative public-private partnership models. Underlying these steps, a company should have a risk management scheme for assessing an array of factors related to the origin of its materials.

The Lacey Act is a fact-based, and not a document-based, statute. While robust third-party certification or verification can be an excellent due care step, such actions do not exempt a company from the underlying legislation.

In July 2012, as part of the Criminal Enforcement Agreement (CEA) with Gibson Guitars, Corp. for violations of the Lacey Act, the U.S. Department of Justice outlined a Lacey Act Compliance Program for the company (Annex B of the CEA). While this does not establish an enforceable legal precedent, its provisions provide a constructive list of actions other companies may adopt.

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

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