



NEWSFLASH

THE LACEY ACT

It has become clear that many people do not fully understand The Lacey Act with regard to the trade in forest products:

Background

The Lacey Act, initially enacted in 1900, is the United States' oldest national wildlife protection statute and serves as an anti-trafficking statute protecting a broad range of wildlife and wild plants. The Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire or purchase any fish, wildlife or wild plants taken, possessed transported, or sold in violation of U.S. state, federal, Native American tribal, or foreign laws or regulations that are related to fish, wildlife, or wild plants, including wood products.

Recent amendments to The Lacey Act makes it illegal under U.S. law for persons to import wood products into the United States that have been taken, possessed, transported, or sold in violation of a *foreign* law or regulation. A second enforcement provision prohibits the making or submitting of any false record, account, label for, or identification of such products (or wildlife) transported or intended to be transported in interstate or foreign commerce, or imported, exported, transported, sold, purchased, or received from any foreign country.

Prior to the recent amendment, the Lacey Act did not apply to all international traffickers of plants, including timber or associated wood products. Previously, the Lacey Act only covered plants native to the United States which are listed in one of the three appendices to CITES or protected by the law of a U.S. state that conserves species threatened with extinction. The amendments to the Lacey Act extend the statute's reach to encompass products, including timber, that derive from plants illegally harvested in the country of origin and brought into the United States, either directly or through manufactured products, including products manufactured in countries other than the country where the illegal harvesting took place.

Prosecution can only be made in the USA.

Amendments to The Lacey Act

In the 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008), the Lacey Act was amended for the purpose of combating illegal logging and expanding the Lacey Act's anti-trafficking protections to a broader set of plants and plant products, such as timber.

The following points and background are designed to provide a concise summary of the amendments as well as background on the Lacey Act.

- ❖ The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of the laws of a U.S. State, or any foreign law that protects plants. The Lacey Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of any plant.
- ❖ The definition of the term "plant" includes trees from either natural or planted forest stands.

- ❖ Beginning on **December 15, 2008**, the Lacey Act also requires an import declaration for plants and plant products, except for plant-based packaging materials used exclusively to import other products. Importers must file a declaration upon importation that contains the scientific name of the plant, the value of the importation, the quantity of the plant, and the name of the country from which the plant was taken
- ❖ Anyone who imports into the United States, or exports out of the United States, illegally harvested plants or products made from illegally harvested plants, including timber, as well as anyone who exports, transports, sells, receives, acquires or purchases such products in the United States, may be prosecuted. **In any prosecution under the Lacey Act, the burden of proof of a violation rests on the U.S. government.**
- ❖ The defendant need not be the one who violated the foreign law; the plants or timber, and the products made from the illegal plants or timber, become “tainted” even if someone else commits the foreign law violation. However, the defendant must know, or in the exercise of due care should know, about the underlying violation.
- ❖ Violations of Lacey Act provisions for timber may be prosecuted through either civil or criminal enforcement actions. Regardless of any prosecution, the tainted plants may be seized and forfeited in the USA.

Penalties for Lacey Act Violations

Violations of the Lacey Act provisions may be prosecuted through either civil or criminal enforcement actions. With respect to potential criminal penalties, a two-tiered penalty scheme exists, creating both misdemeanor and felony offenses, distinguished by a defendant’s knowledge of the underlying law. For a Lacey Act violation to be a felony, the defendant must have knowingly imported or exported fish or wildlife or plants in violation an underlying law or regulation, or knowingly engaged in conduct during the offense that involved the sale or purchase of, the offer for sale or purchase of, or the intent to sell or purchase plants or wildlife with a market value of over \$350 knowing that the fish or wildlife or plants were taken, possessed, transported or sold in violation of an underlying law or regulation. A misdemeanor penalty requires that the defendant “in the exercise of due care” should have known the fish or wildlife or plants were taken, possessed, transported, or sold in violation of an underlying law or regulation.

Civil penalty provisions in most instances require an element of knowledge of the illegal nature of the fish or wildlife or plant in question on the part of the party against whom an enforcement action is brought. However, the Lacey Act’s civil forfeiture provisions are enforced on a strict liability basis. If illegal timber or a product made from illegal timber is brought into the United States, that timber or timber product may be seized whether or not the person from whom it is seized knew of the illegal nature of the product. Nonetheless, the government must still show that a plant, plant product, or wildlife has been imported or received in violation of a State or foreign law or regulation.

The Lacey Act amendment is expected to encourage a risk based approach to timber procurement within the U.S. timber trade and industry. A key strength of the law is that it does not dictate mechanisms and procedures by which legality may be demonstrated or impose unnecessary new controls on suppliers in regions where the existing legal framework can be shown to be effective. Instead the law puts pressure on U.S. trading companies to show due care and to take reasonable measures to monitor supply chains. Companies now have a strong incentive to assess their suppliers and to determine where there may be a significant risk of illegal activity. They must take appropriate action based on this risk assessment - for example by demanding independently certified wood from countries where there is a high risk of illegal activity, while imposing lesser requirements on low risk suppliers

visit us at www.apptimber.com