

What is the Lacey Act?

The Lacey Act is a law that prohibits illegal timber to be traded in the U.S. Importers, exporters & retailers of timber must apply Due Care to avoid penalties. The Lacey Act was amended in May 2008 to include timber and timber products, a change that seeks to eliminate import of illegal wood product into the USA

Requirements for US Importers and Retailers – Due Care

Companies who import wood or wood products to the U.S.A have a responsibility to exhibit **due care**. There is no exact definition for **due care** but interpretation relates to current best practice. If the information in the Declaration of Goods is not known or incorrect, goods can be seized and/or fines imposed.

Declaration of Goods

Exporter must complete U.S “Plant & Plant Product Declaration Form” including:

- Scientific name of the timber (usually a Latin name e.g. *Tectona grandis*)
- Value of imported products (FOB in USD)
- Quantity by weight, volume, area, no. items, or no. pieces
- The country of origin the timber was harvested from
- Percentage of recycled material

Box 1 Key Dates for Implementation of Declaration Forms

May 2008 – changes are made to the Lacey Act

Phase 1 – (April 1 2009) enforcement date for importer declarations

Phase 2 – (Apr 1-Sept 30 2009) Sawn timber & joinery products

Phase 3 – (Oct 1-Mar 31, 2010) panels

Phase 4 – (Apr 1-Sept 30, 2010) furniture & paper

Sept 2010

Effects on Exporters to the US

- Companies who supply wood or wood products to US customers will need to support their customer in complying with the Lacey Act
- US Customers who have been found in violation of the statute, may decide to sue their suppliers

Recommendations

- There are no specific frameworks or documents needed for compliance
- Companies should establish systems to protect themselves from violating the Act & as part of due diligence, implement industry best practices (see box 2)
- Risk can be assessed based on species of wood, supply chain complexity, country corruption indices & resources from NGO's (see www.timbertradeactionplan.info/images/TTAP%20RAT%20final%20report.pdf)

Policing and Enforcement

- Resources used for assessing risk to enforce the Lacey Act will focus on the “likelihood of violations”. This is likely to include high risk products and countries

Examples of Violations

- If a company has wood that does not have valid permits for cutting in the country of origin
- If a shipment is incorrectly labelled as a lower value species to avoid paying higher tariffs
- A manufacturer uses logs from illegal logging and supplies final products to the U.S.
- An importer does not identify the correct country/s of harvest origin

Penalties

There are 3 likely penalties if due care has not been implemented, depending on severity

- Civil – this only needs a “burden of proof that is beyond a reasonable doubt”. Fines up to US\$10,000
- Criminal – a criminal investigation leading to fines up to US\$500,000 & 5 years imprisonment
- Forfeiture – confiscation of the product

Box 2 A Due Diligence Approach - Steps to Implementing a Due Diligence System (DDS)

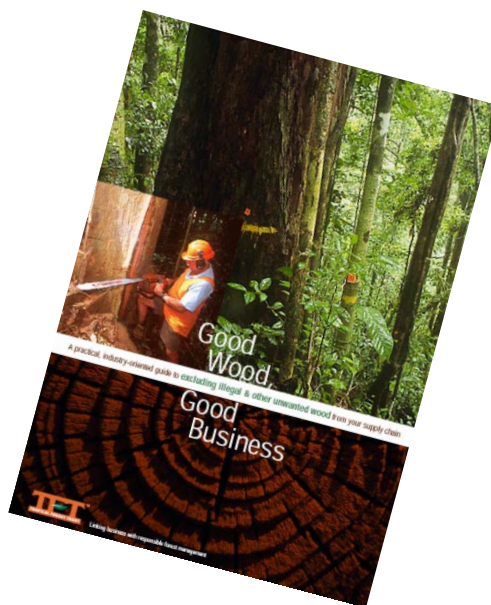
1. Make a public commitment in a Timber Buying Policy, setting out goals & objectives (see www.tropicalforesttrust.com & www.timbertradeactionplan.info/Page.aspx?PageID=22)
2. Set clear wood sourcing requirements. This could include
 - o Products certified to forest certification standards, e.g. FSC, PEFC
 - o Products verified to legality verification standards, e.g. SGS TLTV, SmartWood VLO or VLC
 - o Products traceable to forest sources working with an independent organisation towards certification, e.g. TFT, TTAP, WWF GFTN & SmartStep

Consider contractual measures, e.g. on the purchase order, or in terms & conditions

3. Map supply chains to ensure you understand your wood sourcing
4. Set targets & develop an action plan, initially focusing on managing high risk & unknown sources
5. Establish Wood Control System (WCS) systems to monitor supplychains over time & ensure illegal & unwanted wood does not enter production. Consider on-going verification of each shipment to ensure compliance, particularly for high risk countries (see www.tropicalforesttrust.com/reports.php#GWGB)
6. Monitor progress regularly to check compliance & identify areas for improvement
7. Act on non-compliance by developing robust action plans & exiting sources or relationships that don't improve, or are unable to meet your requirements
8. Report annually on progress against your published policy. Consider 3rd party verification of progress

TFT recommends ensuring all tropical hardwood is FSC certified, or in transition to certification!

For more guidance see TFT's 'Good Wood, Good Business'



TFT Support

- TFT continues to monitor Member's supply chains to ensure illegal wood does not enter & ensure TFT Supported Forests are progressing towards FSC certification
- For more guidance on the Lacey Act & Due Diligence, contact your Member Program Manager, or visit www.tropicalforesttrust.com/reports.php#GWGB & www.timbertradeactionplan.info/Page.aspx?PageID=49

Other Resources

- www.eia-global.org/lacey
- www.illegal-logging.info/
- www.aphis.usda.gov/newsroom/hot_issues/lacey_act/index.shtml