



USA FOREST PRODUCTS LEGALTY LEGISLATION AND FSC

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In 2008, the US Congress amended the Lacey Act, which was adopted in 1900 and was originally meant to protect US wildlife. The amendments made it illegal to trade (import, export, transport, sell, receive, acquire, purchase) any plant or plant product taken in violation of federal, state or relevant foreign laws.

“Import” and “export” mean both the crossing of US federal borders and interstate borders. And obviously, forest products are covered in the definition of a “plant”; in fact they are the main targets of the Act.

With this amendment, the Lacey Act became the first national law in the worldwide fight against the illegal timber trade.

Companies trading forest products into the US must provide with each shipment a declaration to the relevant authorities presenting the countries of harvest and the species involved. While the law does not prescribe it, it does promote that all involved in the trade apply “due care”, meaning they have taken appropriate measures to ensure that no illegal forest products are involved in their trade.

An indication of what is “illegal” is the following:

1. Timber removed from a government protected or designated area. This may include a national park or wildlife reserve.
2. Timber removed from a forest where logging is legal but has been done without proper authorization.
3. Timber harvested without paying all required taxes and fees regarding harvesting, transport and sale of the timber.
4. Forest products shipped in violation of exporting laws (e.g., ban on timber exports).
5. Forest products that have been stolen at any point in the supply chain.

Unlike the EU Timber Regulation or the Australian Illegal Logging Prohibition Act, the Lacey Act does not prescribe what such a “due care” approach should consist of, which means that voluntary initiative as well as legal jurisprudence will over time clarify what is sufficient.

FSC’s response to the Lacey Act

FSC strongly supports governmental action to ban the trade of illegally harvested timber. Ille-



gal harvest can lead to deforestation, forest degradation, and pollution of water and other resources for forest dependent communities. It can also include unacceptable working, payment and contractual conditions, and corruption, tax evasion and questionable profit appropriations.

The presence of illegal timber in the market also directly impacts FSC's mission, as it exerts negative pressure on the prices for timber and forest products (estimates are between -7% and -16%), undermining the economic viability of investments required for responsible forest management and forest products consumption.

Legality alone is not a guarantee against forest degradation, biodiversity loss, violation of worker and community rights, etc. And national legislation in timber producing countries is not a guarantee of ecologically and socially sound forest management practices, protection of High Conservation Value Forests, and prohibition of natural forest conversion. That is why FSC promotes going beyond legality to pursue FSC certification.

FSC's role in complying with the Lacey Act

The first requirement for any FSC forest management certificate is compliance with relevant national and international laws. Also, for Controlled Wood the first requirement is to limit the risk of illegal sourcing. So, working with FSC certified forest products is good "due care" practice.

The Lacey Act (as well as more recent legislation in Australia and the EU) also requires control on compliance with trade and customs laws, which is often not the responsibility of a forest manager but companies down the supply chain. Therefore, FSC has introduced a new rule, from 1st March 2013, to oblige FSC certificate holders in the chain of custody to *"have procedures in place to ensure the import and/or export of FSC certified products by the organization conform to all applicable trade and custom laws"*.¹

Companies that are working with FSC-certified materials and wanting to make a claim of FSC certified products to another company, must possess an FSC Chain-of-Custody certificate. Thus, only certified companies can sell products with FSC claims to importing companies. Such claims of FSC certification provide assurance against illegally harvested forest products. However, if a forest product enters the US after having been processed by more than one company up the supply chain, the importer does not automatically receive from its FSC certified supplier the information the US authorities require on the country of origin and/or the species used. In such cases, the FSC Chain of Custody Standard requires that FSC Certificate

¹ FSC-STD-40-004 V3-0 on Chain of Custody Certification, 16/11/2016, page 13, clause 6.1.a. The original requirement was laid down in Advice 40-004.11 of 27/02/13



Holders are to assist their buyers, on request, with the collection of information regarding species origin of timber and legality of exports from the country/countries of harvest and possible further countries in the supply chain².

While the Lacey Act does not foresee formal recognition of voluntary certification schemes as compliant, in 2012 two steps have been taken that may give (potential) certificate holders positive signals as to its role:

In June 2012, a group of companies and NGOs presented the “**Lacey National Consensus Due Care Defense Standard**”. A tool for companies to use to comply.

The group includes the National Wood Flooring Association, individual forest product companies, National Wildlife Federation. Their aim is to have the procedures used by private actors and “later codified in US law”: “Using a forest certification process like FSC or a stepwise option like the NWFA’s Responsible Procurement Program (RPP)” is part of it.

In August 2012, the Gibson Company and the enforcement authority in the US settled two cases that were brought against this company. Part of the settlement is the presentation of Gibson’s “Lacey Act Compliance Program” which includes reference to FSC “or equivalent certification”.

For more detailed information about the Lacey Act, please visit: <http://www.forestlegality.org/laws-policies/lacey-act>,

Also if you would like to confer directly with FSC US, please contact us at info@us.fsc.org or +1-612-353-4511.

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² FSC-STD-40-004 V3-0 on Chain of Custody Certification, 16/11/2016, page 13, clause 6.1.b. The original requirement was laid down in Advice 40-004.10 of 27/02/13