



ILLEGAL TIMBER PRACTICES, IMPACTS AND LEGISLATION

WHAT IS ILLEGAL WOOD?

Illegal logging takes place when there is a violation of laws on cutting, processing and transporting timber. The definition of what makes wood legal or illegal is controversial but there are some general requirements for legal timber. These include harvesting wood only where you have the rights to the timber, respecting quotas and restrictions, paying royalties and taxes and possessing the necessary authorization to transport and process logs.¹

The impact of illegal logging

Illegal logging is a major driver of deforestation and the cause of severe social, economic and environmental damage. Poor forest management practices and indiscriminate logging lead to biodiversity and habitats loss at the expense of local communities. The World Bank estimates the global market value of losses from illegal logging at over US\$10 billion and lost government revenues of around US\$5 billion.² The impact on developing countries is profound, as the revenue lost could have been invested in sustainable forest management or economic development.



ILLEGAL LOGGING LEGISLATION

Governments have confronted the problem of illegal logging in producer and consumer countries. The main focus of the European Union's Forest Law Enforcement, Governance and Trade process (EU –FLEGT) is on combating illegal logging in producer countries. EU-FLEGT looks at deforestation in a comprehensive way by addressing underlying issues such as poverty and lack of good governance in countries that sell wood to the EU.³ The US Lacey Act focuses on the United States as a consumer country and combats illegal logging by banning illegal wood from the US market. The Lacey Act does not impose US law on other countries because "illegal wood" is defined according to the law of the country of origin.

The US Lacey Act

The Lacey Act is a longstanding law introduced by US congressman John Fletcher Lacey and passed in 1900. Considered the first wildlife conservation law in the USA, the Lacey Act mandates that trade in animal products sourced in violation of any law in any country is illegal under US federal law. The Lacey Act was amended in 2008 to expand its protection to a broader range of plants and plant products.

The amended Act makes it unlawful to trade in any plant that is taken, possessed, transported, or sold in violation of federal or state laws of the United States, laws of a Native American Tribe, or any foreign law that protects plants. It also makes it unlawful to falsify or submit falsified documents, accounts or records of any plant covered by the Act.⁴ Agricultural crops are excluded from the Lacey Act Amendment, as are certain other plants.



In effect since May 2008, the Lacey Act is aimed at individuals and companies that handle plant products and makes it mandatory to provide import declarations with details of the country of harvest and the species name of the plants contained in the product. The enforcement of the declaration requirement is being phased in by product type.⁵

EU-FLEGT

The EU-FLEGT Process started in 2003 as a response to political commitments made by the EU, Member States and partner countries as part of the G8 Program on Forests, and the ministerial conferences on Forest Law, Enforcement and Governance (FLEG) facilitated by the World Bank.⁶

EU-FLEGT aims to develop markets in Europe for legal products by focusing on trade policies and responsible purchasing by governments and timber importers in Member States. The key measure of EU-FLEGT is the development of Voluntary Partnership Agreements (VPAs) - bilateral agreements between the EU and tropical wood exporting countries. The aim of these voluntary agreements is to improve forest governance and provide guarantees that the wood imported to the EU is from legal sources.

The agreements are legally binding on both parties and require the exporting country to develop systems that verify the legality of their timber exports to the EU. The partners agree on the standards and assurance systems and a FLEGT license is required for imports once the agreement is implemented. National legality standards and other requirements are defined through an open and inclusive political process in the partner country with support from the European Commission. In this way, EU-FLEGT creates economic incentives to improve forest governance in partner countries and supports their investment in better forest management.⁷

EU Illegal Timber Regulation

The long implementation required for the FLEGT agreements and concerns about trade with non-partner countries made it necessary to look for additional options. In July 2010, the European Parliament voted in favour of a new law that prohibits placing illegally

harvested timber or timber products on the EU market. The European Council approved the new law in October 2010.

The approved legislation has a similar intent to the Lacey Act and aims to work alongside the EU-FLEGT system. The legislation is based on the principle of due diligence which requires importers to permit the traceability of timber and timber products by providing access to information about their sources and suppliers, including details of compliance with the applicable legislation and the country of harvest. Due diligence procedures will be offered by EU-accredited monitoring organizations but the type of violation and related sanctions are determined by Member States.

The legislation requires that only the first point of entry in a European country is responsible for implementing a due diligence system. No accommodation for the size of a business is proposed. The legislation will apply no matter what the professional level or trade-volume of the operator may be.

Due care in the Lacey Act

The Lacey Act emphasizes the principle of due care. In order to fully comply with the Lacey Act, illegal wood must be eliminated from the supply chain by practicing due care. In the US legal system, due care is a flexible concept defined as the degree of care which





a reasonably prudent person would exercise under the same or similar circumstances. The Act does not provide details of how due care can be shown: it is the responsibility of each company in the supply chain to exercise due care and understand the origin of its forest products.⁸ The expectations of the level of due care also differ based on the level of professionalism expected from an individual or an organization.

Contrary to European legislation, Lacey Act compliance is not limited to actions at the point of entry in the United States and remains with the product. Therefore, a violation of the Lacey Act can occur at almost any point in a forest product supply chain.

THIRD-PARTY CERTIFICATION: PROOF OF LEGALITY?

The EU legislation states that certification may be used in risk assessment procedures⁹ but neither sets certification as a requirement nor gives preference to a particular certification system. For a certification scheme to be officially recognized under the regulation, the certification system will have to seek accreditation with the appropriate authorities.

Third-party certification is also not a legal requirement under the Lacey Act which is a fact-based rather than document-based legislation. Whenever facts show that imported products are of illegal origin, they will override any statement or document to the contrary.¹⁰

While the use of an established certification scheme may not offer full legal protection to importers, it can provide important protection against Lacey Act enforcement. For example, it could be used to help demonstrate the “exercise of due care expected from a reasonable person”, which in the Lacey Act legislation constitutes the difference between “knowingly” and “unknowingly” handling illegal products and the connected legal consequences.

Further, third-party certification may not be a legal obligation, but in the light of increased requirements for due diligence (EU legislation) and acting with due care (Lacey Act Amendment), the need for a credible verification tool that tracks the source of the wood and provides safeguards with respect to legality becomes imperative.

FSC certification and legality

An internationally recognized third-party certification scheme implemented by credible organizations like the Forest Stewardship Council would provide evidence that all possible efforts were taken to ensure that timber was harvested in compliance with national laws and international treaties. Principle 1 of the FSC Principles and Criteria¹¹ mandates that forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is signatory.¹²

FSC is working with EU-FLEGT to ensure that FSC certified wood can be accepted as delivering on the requirements of the Voluntary Partnership Agreements. A company that is FSC certified in partner countries will not then have to go through a separate process for FLEGT once the VPA and the country's national FSC standard are aligned.

The approved EU legislation and the Lacey Act Amendment are positive developments that will address concerns about illegal logging. However, compliance with legislation is only the first step towards responsible stewardship of the world's forests. To have a truly positive impact, legislation needs to create incentives for the implementation of best practices in forestry. Best practices are well beyond legal requirements and ensure environmentally appropriate, socially beneficial, and economically viable forest management.

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1 Illegal-Logging at www.illegal-logging.info 2 The World Bank at www.worldbank.org 3 European Forest Institute, Policy Brief 2: Forest Law Enforcement, Governance and Trade 4 USDA Animal and Plant Health Inspection Service (APHIS) at www.aphis.usda.gov 5 More information on the phase-in schedule at www.aphis.usda.gov 6 European Forest Institute, Policy Brief 2: Forest Law Enforcement, Governance and Trade 7 European Forest Institute, Policy Brief 3: What is a Voluntary Partnership Agreement? 8 Environmental Investigation Agency and World Resources Institute, Factsheet: Are you ready for the Lacey Act? 9 See www.europarl.europa.eu to view the text adopted 10 Environmental Investigation Agency and World Resources Institute, Factsheet: Are you ready for the Lacey Act? 11 The FSC Principles and Criteria are a set of internationally applicable requirements for environmentally responsible, socially beneficial and economically viable management of the world's forests. To be FSC certified, forest managers must comply with the FSC Principles and Criteria. More information is available at www.fsc.org/pc 12 The FSC Principles and Criteria are currently being reviewed and revised. A major aim of this process is to ensure that the FSC Principles and Criteria continue to deliver assurance of legality with respect to new and upcoming regulations.