

COMBAT ILLEGAL LOGGING ACT OF 2007

Amending the Lacey Act to Combat Illegal Logging

What is the Combat Illegal Logging Act of 2007 intended to address?

Rampant, unsustainable illegal logging practices are undermining the rule of law in developing nations throughout Africa, Asia and Latin America. The low-cost timber products that illegal logging generates are also hurting American companies and the American workers they employ. To combat this problem, and level the playing field for industry and workers, the Combat Illegal Logging Act of 2007 would expand the Lacey Act to cover timber and timber products.

What would the Act do?

The Lacey Act currently regulates trade in fish, wildlife, and a limited subset of plants by making it unlawful to “import, export, transport, sell, receive, acquire, or purchase” any that are taken, possessed, transported or sold in violation of any State or, with respect to fish and wildlife only, any foreign law. The new Act would expand the Lacey Act so that violations of foreign law that apply to plants and plant products fall within its domain. It would also specify the types of foreign law violations that trigger Lacey Act liability for plants and plant products, based on those that rise to the level of international concern, as defined in a recent American Forest & Paper Association study on illegal logging. Finally, the Act would create a declaration requirement to facilitate the Lacey Act’s enforcement for timber without placing an undue burden upon law-abiding businesses.

Will any violation of any law of a foreign country trigger Lacey Act liability for timber and timber products?

No. Under the Act, liability would only be triggered if the foreign law in question is intended to prevent theft or ensure the legal right to harvest the plants. Such types of laws are specifically described in the Act.

Will the Act affect domestic trade in timber and timber products?

While the Lacey Act can be applied domestically, virtually all logging that takes place in the United States is legal and it is unlikely that the government will expend its limited resources to investigate possible violations in this area.

How has the Lacey Act been enforced in the fisheries context?

The fisheries industry offers a key comparison: National Ocean and Atmospheric Administration (NOAA) agents estimate that they do fewer than five Lacey Act seizures per month nationwide, which are mainly criminal in nature. Moreover, Customs never detains or seizes shipments of commercial fish or wildlife unless NOAA or Fish and Wildlife Service (FWS) agents ask them to do so. Given their limited personnel resources, as well as the high cost of storing and processing forfeited goods, NOAA and FWS do their homework before conducting a seizure to ensure that the goods are in fact illegal. They focus on the worst actors – importers with actual knowledge and intent to import illegal shipments.

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What is the Combat Illegal Logging Act's import declaration requirement?

Under the amended Act, a basic declaration would need to accompany every shipment of plants or plant products, including the species, country of origin, quantity and measure, and value. These requirements are modeled after existing regulations for wildlife imports currently regulated by the Lacey Act, and resemble declarations for many other imported goods. The Act's declaration requirements will not be unduly burdensome to industry, including the manufacturing sector. Factories manufacturing wood products, in China or elsewhere, are perfectly capable of providing this information to buyers. They currently don't provide it because they have not been asked to.

What is the purpose of the declaration requirement?

The declaration requirements provide basic transparency for wood shipments. The declaration will have critical value for combating illegal logging by: 1) encouraging importers to ask basic questions regarding the origin of their timber and timber products; 2) providing information at the point of import that will allow U.S. authorities with limited resources to do efficient, targeted inspections and enforcement; and 3) helping enforcement agents to immediately identify "low-hanging fruit," such as timber expressly prohibited to be exported.

Is this Act going to disrupt timber and wood-product importers' businesses?

The Act will definitely change the way that folks who are importing illegally-harvested timber and wood products do business – this is its intended purpose. Most U.S. importing companies take steps to ensure the legality of the raw material used to make their wood products. For the many companies who already play by the rules, the Act's requirements should result in minimal changes to business practices. Moreover, when the Act's impact from a competitiveness standpoint is factored in, the effect is a net positive for these companies. This Act changes the incentives to reward due diligence – a sound long-term business strategy from any perspective.

Why doesn't the Act have a so-called "innocent owner" provision?

The Lacey Act gives government agencies the right to seize imports if a preponderance of the evidence demonstrates that the product in question has been imported, exported, transported, sold, received, acquired, or purchased contrary to the prohibitions in the Lacey Act. An "innocent owner" provision would allow the entity that is the target of a forfeiture proceeding to assert lack of knowledge of the illegality as a defense. Neither the Lacey Act, as amended in 1981, nor the Civil Asset Forfeiture Reform Act recognize an "innocent owner defense" for Lacey Act forfeiture cases. It is this risk of civil forfeiture that creates an incentive for companies to do their due diligence, find trusted suppliers, and take steps to ensure that their imports are legally harvested. To further mitigate the risk that their imported goods violate the Lacey Act, the seafood industry often includes language in their sales contracts that makes payment to the seller contingent upon Customs' clearance of a given shipment.

Supporters of the Combat Illegal Logging Act

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