



## All you need to know about the US Lacey Act, the EU Timber Regulation and the Australian Illegal Logging Prohibition Bill



## *International Developments in Trade in Legal Timber*



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## **New Trade Rules to Counter Illegal Logging**

Illegal logging has a devastating impact on some of the world's most valued forests. It has brought on serious environmental as well as economic and social consequences. Forests are key in the mitigation of climate change. Forests and timber products cost-effectively lock up immense quantities of carbon. In many parts of the world forests are expanding and well managed. Using timber in buildings requires considerably less energy – and therefore less carbon emissions – than nearly all other materials.

Recognising that the forest products trade is part of the solution, a rapid change in the way that international trade is conducted has occurred.

## **Private and Public Timber Procurement**

### **Retailer purchasing preferences**

More than 15 years ago, retailers and their buyers in Japan, North America and Europe wanted to ensure sustainable supplies of timber, demonstrate corporate responsibility and minimise reputational risk to their businesses. Major international companies including Walmart, Kingfisher and Carrefour now require suppliers to be able to demonstrate sustainability through third party certification schemes.

### **Public procurement policies**

By the mid 2000s, Japan and several countries in the European Union developed public procurement policies for timber which required third party evidence of legal compliance or sustainability. Central government contracts account for 15–20% of all timber and timber product purchases in EU countries.

## Binding Legislation

In 2008, the US Congress passed a new law making it unlawful to import, export, transport, sell, receive, acquire or purchase in interstate or foreign commerce, any plant taken or traded in violation of the laws of the US, a US State, or relevant foreign laws.

The EU Parliament also passed a law, which will be applicable from March 2013. It requires all operators who first place timber products on the market to undertake due diligence and makes it an offence to place illegal forest products on the EU market. This regulation is part of a 2003 initiative, the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. The FLEGT Action Plan recognises the role both producers and consumers play in curbing and stopping illegal timber harvesting and trade.

In Australia the Illegal Logging Prohibition Bill will place a prohibition on the importation into Australia, as well as domestic processing, of illegally logged timber and timber products. Importers and domestic processors will, twenty-four months after the commencement of the legislation, be required to undertake due diligence for certain products and make a declaration at the border that they have undertaken the required due diligence.

The Bill also sets out the establishment of a comprehensive monitoring system with investigation powers and a strong penalty system to enforce the requirements of the Bill.

A number of other countries are also reviewing their legislation.

## Amendment to the US Lacey Act

The Lacey Act is a U.S. law originally passed in 1900 to protect wildlife from trafficking. In 2008 it was amended to include plant products, making it the world's first ban on the trade of illegally sourced wood products. Under the amended Act, it is unlawful to import, export, transport, sell, receive, acquire or purchase, in interstate or foreign commerce, any plant taken or traded in violation of the laws of the United States, a U.S. state, tribal territories, or foreign countries.

The law has three components:

- a ban on the trade in the United States of illegally sourced wood products (whether they come from within the United States or any other country);
- a requirement to submit import declarations on certain wood products which include information on country of origin, species, volume, and value; and
- penalties for violating the law. These are potentially steep, and may include jail time. The stiffest penalties are reserved for those who knowingly traded in illegal products. For those who unknowingly violated the Lacey Act, penalties depend on whether the company or individual did everything they could to attempt to buy legal products – in other words, whether they exercised 'due care.'

The Lacey Act covers the entire supply chain. Illegal activity at any point means that the product may not be legally traded in the United States. All parties are equally liable under the law, not just the first placer into the U.S. market.

### Products covered

The ban on trade in illegally sourced wood products applies to all products, except for certain scientific specimens and food crops, and has been in effect since the law was passed in 2008. It includes common products such as raw logs, sawn timber, plywood, composite materials, furniture, pulp, paper and musical instruments.

The declaration requirement for imports is being phased in and does not yet cover pulp and paper, along with some other categories of highly processed products. The schedule is available from the Animal and Plant Health Inspection Service (APHIS), the U.S. agency that implements the Lacey Act.

### How it works

The Lacey Act was designed to be simple and flexible, to adapt to the needs of individual businesses. It requires U.S. buyers to avoid buying illegally sourced timber, but how best to accomplish that goal is left entirely to the buyers themselves.

The law is fact-based, not document-based. This means that there is no requirement to have certification or verification of legal origin, but also means that there are no documents, stamps, licenses, or marks that are accepted as final proof of legality.

It is up to each individual U.S. buyer to determine how best to conduct due care and avoid illegal timber in the market, in accordance with its own risk profile and level of comfort with its suppliers. In practice, the steps taken to conduct due care will probably closely track those taken to manage risk properly under the due diligence requirements of the EU Timber Regulation.

**For more information contact**

[lacey.act.declaration@aphis.usda.gov](mailto:lacey.act.declaration@aphis.usda.gov)

or visit

[www.aphis.usda.gov/plant\\_health/lacey\\_act/](http://www.aphis.usda.gov/plant_health/lacey_act/) or [www.forestlegality.org](http://www.forestlegality.org)



## Frequently Asked Questions about the Lacey Act

### 1. Can I still export to the United States?

The Lacey Act does not ban or restrict trade of timber products into the United States. Since U.S. buyers may not trade in illegally sourced wood, they may require additional documentation or other assurances from suppliers to ensure that their timber products do not violate the law.

### 2. What is considered 'illegal' under the Lacey Act?

There are two parts to a Lacey Act violation. First, an underlying law must be violated. There are only six specific types of laws which, if violated, mean that the resulting product is illegally sourced. They concern forestry, taxes, and export. Other activities which may be illegal in the country of origin (e.g. labour violations) are not covered by the Lacey Act.

The six categories are:

1. Theft of plants
2. Taking plants from an officially protected area such as a park or reserve
3. Taking plants from other types of 'officially designated areas' recognized by a country's laws and regulations, such as a designated community forest
4. Taking plants without, or contrary to, required authorisation, including cutting without permits for the area or species harvested
5. Failing to pay appropriate royalties, taxes, or fees associated with the harvest, transport, or commerce of plants, including not paying stumpage fees or paying appropriate taxes
6. Violating laws concerning export or trans-shipment, such as exporting logs from a country with a log-export ban

Second, the resulting product must be traded to or within the United States. This second transaction triggers a Lacey Act violation.

### 3. Do I need to be certified to keep exporting to the United States? What is the best certification standard to ensure my continued market access?

No. The law does not require certification or verification. Individual buyers may demand that their suppliers be certified, because certification is seen as helping to reduce risk of accidentally buying illegally sourced product and establishing that the buyer has tried to conduct due care. This decision is entirely up to the private market and is not regulated by the U.S. government.

No third-party documents or systems are required – or recognised – as proof of legality under the Lacey Act.

### 4. Who enforces the U.S. Lacey Act? How can I keep up to date on developments?

A number of federal agencies in the United States contribute to implementing the law, including Customs and Border Protection, the Fish and Wildlife Service, and the Department of Justice. The main implementing agency is the Animal Plant Health Inspection Service, part of the U.S. Department of Agriculture. Staff regularly answer questions from worldwide businesses, and can be reached at [lacey.act.declaration@aphis.usda.gov](mailto:lacey.act.declaration@aphis.usda.gov).

APHIS keeps a registry where stakeholders can sign up to be informed by email of changes, updates, and opportunities to make public comment on proposed implementation. Anyone affected by the Lacey Act, including exporters, processors, and manufacturers, may register, at <https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new>.



## 5. Can the Lacey Act, or any of these laws, be enforced?

Yes. The Lacey Act has a century-long history of successful prosecutions as a wildlife law. The first major case related to the importation of illegal wood products was resolved in the U.S. in August 2012. The company in question, Gibson Guitar Corp., settled a multi-year investigation with the U.S. Department of Justice by paying US \$300,000 in penalties, forfeiting over \$250,000 in seized Madagascar ebony, and acknowledging that it had continued to buy certain wood products from Madagascar even after it had been warned that they were likely to be illegal. The settlement also includes details on Gibson's new compliance programme to help ensure that it will only source legal wood in the future. As additional tools for traceability become available, enforcement of these laws will become easier for governments in consumer countries.

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## The EU Timber Regulation

The EU Timber Regulation is part of the European Union's policy to fight illegal logging and associated trade, which was defined in 2003 under the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan.

### Enforcement and products covered

As of 3 March 2013, the EU Timber Regulation will prohibit the first placing of illegally harvested timber and products produced of such timber on the EU market. The Regulation obliges operators on the EU market to have systems in place that assure that the timber is from legal origin. The definition of legal timber is based on the law of the country of harvest. The Regulation covers a large range of timber products including furniture, pulp and paper, logs and sawn wood.

### How it works

Operators who are placing timber or timber products on the EU market for the first time must exercise 'due diligence'; the Regulation applies to timber harvested within the EU or imported, and to imported timber products. The core of the 'due diligence' obligation is that operators are required to undertake a risk assessment and risk management exercise so as to minimise the risk of placing illegally harvested timber, or products containing illegally harvested timber on the EU market. This means that they need to have access to information on e.g. their supplier, the tree species, the country of harvest of the timber and need to take steps to ensure that their supply contains only legally harvested timber.

Each country in the EU designated a competent authority that will be responsible for the enforcement of the Regulation. Countries in the EU will also determine the type and range of penalties that will apply in case of non-compliance with the Regulation.

The Regulation provides for Monitoring Organisations to be recognised by the European Commission. These organisations are private entities, and will provide EU operators with due diligence systems that are ready to use. Operators can thus develop their own system or use one developed by a monitoring organisation.

### EU FLEGT Action Plan

The EU Timber Regulation is one measure under the EU FLEGT Action Plan, which was launched in 2003. The FLEGT Action Plan has several elements that aim to tackle the underlying causes of illegal logging. Another measure is the establishment of bilateral agreements between the EU and partner countries. These agreements are called Voluntary Partnership Agreements (VPAs).

Partner countries with a VPA commit to establishing a timber legality assurance system designed to ensure the legality of all timber exported to the EU. Timber exported from these countries must be accompanied by a FLEGT licence. Under the EU Timber Regulation, FLEGT licensed timber is considered risk free and requires no further due diligence measures from the importer.

**For more information contact**

the EU FLEGT Facility at [info@euflegt.efi.int](mailto:info@euflegt.efi.int)

Or visit [www.euflegt.efi.int](http://www.euflegt.efi.int)

and

[ec.europa.eu/environment/forests/illegal\\_logging.htm](http://ec.europa.eu/environment/forests/illegal_logging.htm)

## Frequently Asked Questions about the EU Timber Regulation

### 1. Will I be able to export to the EU after March 2013?

The EU Timber Regulation is not banning or impeding trade in timber products. However, as EU operators are prohibited from placing illegally harvested timber on the EU market and must exercise due diligence to ensure that their timber is not illegal, they will require information and documentation from their suppliers ensuring the wood's legality.

If an operator exercising due diligence concludes that one of its timber sources constitutes a 'non-negligible' risk, that operator has to apply risk mitigation measures. Measures to mitigate the risk can range from requiring additional information, documentation or certification against a third party verification or certification standard that complies with the applicable legislation in force in the country of harvest, according to the requirements of the EU Timber Regulation, to changing the supply source.

### 2. What is the best certification standard to ensure I can keep exporting my products to the EU?

The acceptability of a certification standard as tool in the risk assessment and risk mitigation process is a decision that your client in Europe – the operator that places the timber on the EU market for the first time – has to make after a careful assessment of the credibility of a particular third party verified scheme as required by the EU Timber Regulation and the Commission implementing Regulation; the responsibility lies with the operators.

3. Will the certificates from the Forest Stewardship Council, Programme for the Endorsement of Forest Certification and other third party verified schemes be sufficient proof of legality?

Certification by the Forest Stewardship Council (FSC), the Programme for the Endorsement of Forest Certification (PEFC) as well as other third part verified schemes can be used as a tool in the risk assessment and risk mitigation process if operators assess them as sufficiently credible; certificates however, are not an evidence of legality and do not absolve operators from the obligation to collect all the information and assess all risk mitigation factors as required by the EU Timber Regulation and the Commission Implementing Regulation. Only FLEGT-licensed timber coming from a country that has a Voluntary Partnership Agreement (VPA) with the EU and whose timber legality assurance system has been declared functional and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permits for the export of timber listed in Annexes A, B or C to the CITES Regulation will be accepted as proof of legality.



#### 4. Who will enforce the EU Timber Regulation?

The EU Member States will be responsible for implementing and enforcing the EU Timber Regulation. The European Commission is responsible for monitoring its effective and uniform implementation by the Member States.

EU Member States have designated Competent Authorities responsible for implementation of the EU Timber Regulation. Their tasks include carrying out checks on operators, monitoring organisations, and maintaining and communicating records of their actions.

Member States must enact penalties for infringements of the EU Timber Regulation, which have to be effective, proportionate and dissuasive.

#### 5. What are the EU, the USA and Australia doing to harmonise their systems in terms of legislation and due diligence regulations so that our company can go through the same process to export to these different markets?

US, Australian and EU regulations take a substantially similar approach in seeking to deny illegally harvested timber access to the market but the regulatory frameworks of these countries work differently.

For implementation purposes it will mean that operators in the US and the EU will need substantially similar information demonstrated in different ways. In particular they will need to know the origin of the timber imbedded in their products and to ensure it has been legally harvested.

6. I manufacture rubber wood products from wood that comes from a plantation and is a by-product. Do I still need the documentation?

Whoever is placing these timber products on the EU market for the first time – whether timber comes from a plantation or from a natural forest –, is obliged to follow a due diligence system that prevents illegally harvested timber from entering the EU.

If the timber comes from a country that has a Voluntary Partnership Agreement (VPA) with the EU, and rubber wood from plantations is included in Annex 1 (the list of products subject to FLEGT licensing) to that country's VPA, the timber must come with a valid FLEGT licence. This is the case once the country's legality assurance system has been declared functional and the country has begun issuing FLEGT licences.

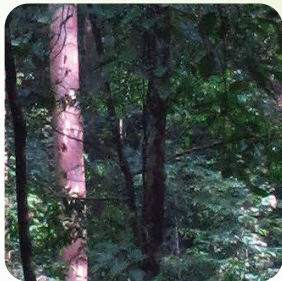
7. Will a container holding merbau in the Port of Antwerp without the right proof of legal source be confiscated? Will it pass through customs and, if so, will the importer be sued?

Once the legality assurance system of a country that has a Voluntary Partnership Agreement (VPA) with the EU has been declared functional, that country can start issuing FLEGT licences for timber that will be exported to the EU.

If a container holding merbau is exported from a VPA country with a valid FLEGT licence it can enter the EU at any port after the FLEGT licence has been checked at the border control and confirmed to be valid. If it is not covered by a valid FLEGT licence, the container will be held and prevented from import by customs in Antwerp or any other port/border control. Further enforcements measures could be taken subject to the circumstances of the case and the applicable legislation.

If the container holding merbau was imported to the EU from a country that does not have an active VPA after 3 March 2013, the requirements of the EU Timber Regulation will apply.

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## Australian Illegal Logging Prohibition Bill

Australia's Illegal Logging Prohibition Bill 2012 will complement international efforts to promote legal timber trade. The legislation will restrict the movement of illegally logged timber into Australia and will be in two parts – primary legislation, followed by detailed regulations.

The legislation promotes trade in legally harvested timber by restricting the importation of illegally logged timber and forms part of international efforts to do so.

The Bill defines illegally logged as:

*'in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.'*

Timber that has been harvested in accordance with the legislative regime of the relevant country would be considered to be legally logged.

This legislation:

- only places requirements on Australian businesses; establishes equal treatment for suppliers of timber regardless of nationality;
- applies equally to both Australian-grown and imported timber; and
- is consistent with Australia's obligations under the World Trade Organisation.

From the date the Bill becomes law, there will be a high-level prohibition in place on importing or processing illegally logged timber. In order to prosecute someone against this prohibition, it will need to be proven that an Australian importer or processor knowingly, intentionally or recklessly imported or processed illegally logged timber.

Within two years of the Bill becoming law, the regulations will outline the due diligence process for importers and processors of domestic timber regarding certain timber products. Regulated timber may include raw and sawn timber, paper, pulp and furniture. Due diligence requirements will vary, according to the product.

The regulations will also specify exemptions (for example, antique furniture).

Additionally, penalties ranging from fines to imprisonment may be applied where an individual or a company is convicted of importing timber or timber products identified as illegally logged.

Australia will continue to work towards alignment with the US and EU regime to minimise the impact of the legislation on businesses exporting timber to Australia.

**For more information visit**  
[www.daff.gov.au/illegallogging](http://www.daff.gov.au/illegallogging)  
or email  
[Illegallogging@daff.gov.au](mailto:Illegallogging@daff.gov.au)



## Frequently Asked Questions about the Australian Illegal Logging Prohibition Bill

### 1. Who does this legislation affect?

The Illegal Logging Prohibition Bill 2012 will make it an offence for Australian importers to place timber or timber products onto the Australian market that have been illegally harvested in the country of origin. The legislation applies equally to processors of logs harvested in Australia.

### 2. What do Australia's trading partners need to do?

The Bill will place no legal obligations on Australia's trading partners.

### 3. How is illegal logging defined?

'Illegal logging' is defined as any timber that has not been legally harvested according to the laws of the country of origin.

### 4. Will people or businesses exporting timber to Australia notice any changes?

At first, Australian importers may advise their international suppliers of the new Australian legal framework or ask their suppliers to confirm that the relevant product is legally harvested. Many Australian businesses do this already. This will not be a legal requirement of an Australian business. Twenty-four months after the Bill becomes law, importers will be required to seek information from their suppliers about the timber they are purchasing and assess the risk of the product being illegally logged.

Evidence that Australian importers may find useful includes:

- third party certification systems like PEFC or FSC;
- national timber legality verification systems like SVLK (Sistem verifikasi legalitas kayu), especially where those systems are recognised by other governments; and
- evidence of harvest permits or licensing arrangements.

## 5. Is the legislation compliant with international trade obligations?

The legislation is consistent with Australia's international trade policy and its obligations under the World Trade Organisation.

## 6. What are timber importers' and processors' responsibilities?

At first, Australian importers and processors must not knowingly, intentionally or recklessly import or process illegally logged timber. Twenty four months after the legislation commences, importers and processors will be required to complete a process of due diligence, specified in the regulations, on the importation of certain products.

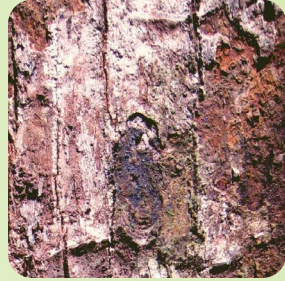
## 7. How do importers and processors ensure they're doing the right thing?

If an importer or processor receives information that the timber is illegally logged, believes the timber is illegally logged or is made aware that there is a substantial risk that the timber was illegally logged, they should exercise caution about importing or processing the timber.

## 8. What penalties can be applied under this legislation?

Penalties are at the discretion of a court; the maximum penalties that may be applied are:

- five years imprisonment, and/or
- \$55,000 for an individual, and/or
- \$275,000 for a corporation or body corporate



## What do these changes mean for timber industries?

Major markets for timber are aligning policies and laws to address the issue of illegal logging. Whilst government purchasing policies have played a major role, these new laws are adding clear enforcement policies, raising the bar for the industry.

Buyers from these markets will increasingly want to know where the timber in the products they buy comes from. Each of the regulations has an element of 'due care' or 'due diligence' in place. Companies can expect more enquiries from buyers requesting documentation that the timber used in their products is legal.

## What can you do?

All these laws bring one fundamental change – the liability is now on the buyer. None of these laws asks for proof of legality per se and it is up to the State to prove that the products are illegal. But buyers in reality will want that assurance, so it is anticipated that the need for independently verified legality claims will increase. In all of these new and proposed laws, certification is not an automatic passport; but certification services are expecting greater demand for work, as certification can contribute to efforts to minimise risk.

Requirements for Australia are still uncertain at this stage as regulations under the Illegal Logging Prohibition Bill (2012) are still under development. The EU and U.S. laws similarly will be expecting buyers to know at the very least the species and country of origin of their forest products. Producers, manufacturers and traders along the supply chain need to be prepared to answer such questions, and demonstrate how they have procedures and checks in place to minimise risk of illegal timber and products entering the supply chain. For those who want to be ahead of the game, acting responsibly is very likely to be a good business decision for the future.

