

# The Lacey Act Amendments of 2008: The World's First Ban on Illegal Logging Combats Deforestation But Gets Stumped by Foreign Laws

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	188
II.	A BRIEF HISTORY OF UNITED STATES EFFORTS IN COMBATING DEFORESTATION, AND AN INTRODUCTION TO THE LACEY ACT.....	189
III.	UNDERSTANDING THE 2008 AMENDMENTS TO THE LACEY ACT.....	191
IV.	COMPLIANCE, ENFORCEMENT, AND IMPLEMENTATION OF THE LACEY ACT AMENDMENTS .....	194
V.	THE PROBLEMS OF ILLEGAL LOGGING AND THE SHORTCOMINGS OF THE AMENDED LACEY ACT'S DEPENDENCY ON FOREIGN FORESTRY LAWS .....	197
VI.	ADDRESSING THE SHORTCOMINGS OF THE LACEY ACT AND ANALYZING ALTERNATIVE SOLUTIONS.....	202
VII.	CONCLUSION.....	207

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## I. INTRODUCTION

Deforestation has undoubtedly been an issue at the forefront of the global concern about climate change, and one that has managed to continually escape any legislation powerful enough to control it, either national or international. The problems posed by deforestation not only affect global climate change, but also indigenous peoples, native species of animal and wildlife, and local economies that depend on the preservation, or at least monitored harvesting, of forests and wildlife areas. The United States has been a pioneer in creating legislation that sought to protect and preserve forestry and wildlife domestically, but with deforestation growing as an international and global problem, domestic policy with only a domestic reach became insufficient.

When Congress passed the Lacey Act in 1900, more than a century ago, its intentions were good and its foresight into the necessity of starting early in the preservation of animals and wildlife by prohibiting and limiting the trade and sale of such “goods” was unprecedented. However, changing times and increasing destruction throughout the years called for stronger legislative action that could effectively address new problems that resulted from the problem of illegal logging. In 2008, Congress amended the Lacey Act to establish the world’s first ban on illegal logging by creating stricter limitations and penalties on plants and wood products that are traded or sold from illegal sources.<sup>1</sup> Although the Lacey Act primarily regulates the market within the United States, its limiting effects expand to a much broader scale due to its regulation of the source of such lumber and wood products.<sup>2</sup> Congress’s amendments to the Lacey Act now strengthen the restrictions on illegal logging. However, despite their positive and effective demonstration of the United States’ efforts of combating the negative impact of global deforestation, the amendments are nonetheless weakened by its dependency on the strengths and effectiveness of foreign laws that combat illegal logging.

By exploring the history of the United States’ legislative efforts in dealing with the problems deforestation has caused and the origins of the Lacey Act, it is possible to understand the inspiration behind the 2008 amendments to the act. Further, exploring the minute details of the Lacey Act amendments and understanding how the amendments have changed the power and meaning behind the original Lacey Act highlights the amendments’ strengths and weaknesses. Also, in understanding how

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1. *The US Lacey Act: Frequently Asked Questions About The World’s First Ban on Trade in Illegal Wood*, U.S. ENERGY INFORMATION ADMINISTRATION (Jan. 2009), <http://issuu.com/eia-global/docs/eia.laceyreport.english>.

2. *Id.*

the new amendments are being implemented and enforced, it is possible to see which federal agencies are putting force behind the words of the Lacey Act, and how companies can improve their compliance out of an effort to combat the problems of illegal logging as well as protect themselves legally and financially from committing a violation. Finally, by evaluating suggested solutions to addressing the amendments' weaknesses and understanding its restraints, it is possible to clearly see the main point of weakness behind the Lacey Act amendments while still appreciating the value behind its unprecedented status as the world's first ban on illegal logging.

## II. A BRIEF HISTORY OF UNITED STATES EFFORTS IN COMBATING DEFORESTATION, AND AN INTRODUCTION TO THE LACEY ACT

The history of deforestation in the United States and much of the remainder of Northern America involves major devastation that wiped out many forests after European settlers set foot. The problems were further exacerbated when the timber and lumber industry began to grow, coupled with inefficient methods of agriculture and increased demand for wood.<sup>3</sup>

Following the devastation which was the effect of early mass deforestation in the United States during the early 19th and 20th century, Congress displayed a clear awareness of the problem of domestic deforestation by passing several acts that served to protect and manage the existing forests. When industries began to grow, economies started expanding and technological improvements demanded the consumption and use of all forms of lumber and wood.<sup>4</sup> This resulted in a rapid growth in the trade of wood-derived products.<sup>5</sup> Further, when the demand continued to increase for various lumber and wood products, the United States, along with Canada and the remainder of North America, could not meet the demand, and importation of lumber products began to

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3. Tara L. Tchir et al., *Deforestation in North America: Past, Present and Future*, in 1 REGIONAL SUSTAINABLE DEVELOPMENT REVIEW: CANADA AND USA (2004), available at ENCYCLOPEDIA OF LIFE SUPPORT SYSTEMS.

4. See generally Richard W. Haynes, *An Analysis of the Timber Situation in the United States: 1989-2014*, USDA Forest Service General Technical Rep. RM-199 (1990), available at <http://www.fs.fed.us/pl/rpa/89pdf/Timber%20Situation1.pdf> (discussing the growth in the timber industry).

5. *Id.*

increase.<sup>6</sup> The mass market of lumber products quickly earned its place on the international economic stage.

During the surge of environmental legislation that passed through the halls of Congress in the 1960s and 1970s, one of the most important pieces of legislation that served to protect forestry and plant wildlife in the United States was the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA). The RPA soon became the umbrella document of the National Forest Management Act of 1976, which is considered one of the primary pieces of legislation protecting and preserving domestic forestry.

The RPA, which “authorizes long-range planning by the US Forest Service to ensure the future supply of forest resources while maintaining a quality environment,”<sup>7</sup> brought the issue of preservation and planning of forestry to the forefront of environmental legislation. Similarly, the National Forest Management Act of 1976 amended its predecessor legislation by requiring that the Secretary of Agriculture assess forest lands, and develop and implement a resource management plan for each unit of the National Forest System.<sup>8</sup> These two pieces of legislation together made preserving national forest lands a pressing environmental issue in the United States. By combining the original Lacey Act with these other forms of legislation enacted to protect forestry, the United States has set an excellent example for keeping problems with deforestation under control domestically, which paves the way for other countries to hopefully follow suit.

Prior to the 2008 amendments that expanded its reach and its restrictions, the Lacey Act was already a pioneer in the arena of prohibiting the trade and sale of illegally sourced wildlife. The original provisions of the Lacey Act primarily sought to protect wildlife and endangered animals that were being exploited as a result of illegal trafficking.<sup>9</sup> Throughout the years, Congress has amended the Lacey Act several times, which expanded the number of protected species of wildlife and plant life that are illegal to harvest, trade, sell, or import.<sup>10</sup> Before the 2008 amendments, the Lacey Act did not fully address the issue of plants or forestry.<sup>11</sup>

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6. *Id.*

7. *Acts and Legislation*, NATIONAL FOREST FOUNDATION, <http://www.nationalforests.org/explore/legislation> (last visited Nov. 6, 2013).

8. *Id.*

9. See Press Release, U.S. Fish & Wildlife Serv., Dep’t of the Interior, Nation Marks Lacey Act Centennial, 100 Years of Federal Wildlife Law Enforcement (May 30, 2000) <http://www.fws.gov/pacific/news/2000/2000-98.htm> [hereinafter *Nation Marks Lacey Act Centennial*].

10. *The US Lacey Act*, *supra* note 2, at 1, 2.

11. See *Nation Marks Lacey Act Centennial*, *supra* note 9.

### III. UNDERSTANDING THE 2008 AMENDMENTS TO THE LACEY ACT

The 2008 amendments to the Lacey Act added several new provisions that expanded the number of species of protected plants and, consequently, made such species illegal to harvest, sell, or trade.<sup>12</sup> Further, the amendments strengthened the penalties and punishments for violations of the provisions of the Act.<sup>13</sup> Most importantly, the 2008 amendments made it clear that the new provisions would serve the world's first complete ban on illegal logging.<sup>14</sup>

The amendments strengthened the provisions by creating a two-part system that sought to ban the importation, trade, or sale of a much broader scope of plants and forestry into the United States.<sup>15</sup> A product must satisfy both parts of the test to be considered a violation of these new provisions. The first part requires that the product or material be illegally sourced.<sup>16</sup> The Lacey Act defines an illegally sourced plant as one that is “taken, harvested, possessed, transported, sold or exported in violation of an underlying law in any foreign country or the U.S.”<sup>17</sup> However, Congress limited the Lacey Act when defining the reach of these foreign and domestic laws by requiring that the underlying law be one that regulates any or all of six different areas. The six areas are as follows: “theft of plants; taking plants from an officially protected area, such as a park or reserve; taking plants from other types of ‘officially designated areas’ that are recognized by a country’s laws and regulations; taking plants without, or contrary to, the required authorization; failure to pay appropriate royalties, taxes or fees associated with the plant’s harvest, transport or commerce; or laws governing export or trans-shipment, such as a log-export ban.”<sup>18</sup>

Upon satisfying the elements of the first part of the test, a violation occurs if “a person or company [trades] this illegally-sourced plant in U.S. interstate or foreign commerce.”<sup>19</sup> Despite any plants or products that may violate any or all aspects of the first part of the test, it is necessary that the person or company “import, export, transport, sell, receive, acquire, or

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12. *The US Lacey Act*, *supra* note 2, at 1.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 2.

purchase” the product or plant in order to trigger a violation of the Lacey Act.<sup>20</sup> These provisions lay out clearly the various steps that importers, sellers, traders, and shippers can take to avoid violating the Lacey Act.

Further, the law sets forth several steps that anyone involved in the trade, sale, or transport of lumber or wood products should follow to abide by the provisions of the Lacey Act. First, the Lacey Act lays out clearly what is defined as a “plant” and what is required for companies or persons to properly make a declaration. There are several definitions that allow for enforcement of the Lacey Act to be more efficient. First, those who import must make a declaration of the items they are shipping in regards to plants or plant products.<sup>21</sup> The declaration requires information regarding “the scientific name of any species used, the country of harvest, the quantity and measure, and the value” of the shipment of plants or plant products.<sup>22</sup> Further, the Lacey Act specifies that a plant includes “any part or derivative product of any wild member of the plant kingdom, including trees harvested from plantations. This includes all wood products.”<sup>23</sup> The Lacey Act makes only a few exceptions to this definition, which include live trees or plants that are planned to be replanted or specimens used for only research but are not listed as an endangered species and common food crops.<sup>24</sup> In addition to the explicit definitions of what is a violation and what is not, the Lacey Act amendments also lay out the penalties as a result of any violations. Civil or criminal penalties apply differently depending on how blatantly a person or company chose to commit the violation, and whether the person or company engaged in “due care.”<sup>25</sup> The Lacey Act defines “due care” as “that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.”<sup>26</sup> However, exercise of due care can be largely subjective and it is up to the individual company or person’s discretion in exercising due care such that they can ensure they are not in violation of the Lacey Act.<sup>27</sup>

In organizing the penalties, the Lacey Act amendments categorize violations into two categories: “knowingly engaged in prohibited conduct” and “unknowingly engaged in prohibited conduct.”<sup>28</sup> The varying degrees of severity of penalties decrease as culpability decreases. If a person or

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20. *Id.* (quoting 16 U.S.C.A. § 3372(a)(2)).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 3.

26. *Id.* at 4 (citing S. REP. NO. 97-123, at 10 (1981)).

27. *See id.*

28. *Id.* at 3.

company knowingly engaged in prohibited conduct by trading in illegally sourced wood, they are potentially subject to a criminal felony fine, possible imprisonment for up to five years, and forfeiture of goods.<sup>29</sup> Similarly, if they knowingly made a false import declaration, they may be subject to a criminal felony fine or a civil penalty, possible prison for up to five years, and forfeiture of goods.<sup>30</sup>

If the person or company did not knowingly engage in prohibited conduct, the issue of due care becomes pivotal in determining the possible penalty. If the party did not knowingly engage in prohibited conduct, but also did not exercise due care in making sure their products would not violate the Lacey Act, they may be subject to a criminal misdemeanor penalty and a possible one-year prison sentence, or a civil penalty fine and a forfeiture of goods if they traded in illegally sourced wood or made a false import declaration.<sup>31</sup> On the other hand, if they unknowingly engaged in prohibited conduct and exercised the proper due care, the Lacey Act does not assign nearly as much culpability to the person or company. The resulting penalties are either a forfeiture of goods if the person or company traded in illegally sourced wood, or a civil penalty fine and possible forfeiture of goods if the person or company made a false import declaration.<sup>32</sup>

These provisions of the Lacey Act, although explicit, still leave significant room for both error and illegality to take place. Since violations can take many forms, and since these provisions come into play through company or personal compliance rather than active and forceful enforcement, it is not difficult to see how potential problems may arise from these possible loopholes or weaknesses. However, these amendments to the Lacey Act have undoubtedly created a massive barrier and an effective ban on illegal logging, which is one of the largest reasons for deforestation.

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29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

#### IV. COMPLIANCE, ENFORCEMENT, AND IMPLEMENTATION OF THE LACEY ACT AMENDMENTS

Despite these potential loopholes within the Lacey Act, enforcement and implementation have been relatively successful. Several U.S. government agencies are involved in the implementation of the Act's new provisions and the enforcement of the penalties in the event that a company or individual violates the Lacey Act. These agencies work together to ensure that the new provisions are observed and followed, making the Lacey Act a powerful, active, and a vigilant part of American legislation.

In processing one of the first parts of a company's efforts to observe and follow the Lacey Act provisions, the United States Department of Agriculture's Animal Plant Health Inspection Service (APHIS) oversees the declarations required with any shipment or trade activity of wood products.<sup>33</sup> APHIS, which traditionally has overseen plant imports, works with the United States Department of the Interior's Fish and Wildlife Service (FWS) to investigate illegal plant cases.<sup>34</sup> Along with these two agencies, the Department of Homeland Security, which is in charge of the United States' customs, "monitors the borders through Customs and Border Protection," and aids in investigation of illegal or criminal activity.<sup>35</sup> After discovering evidence pertaining to the illegality of a good or its obtainment through illegal or criminal means, federal inspectors working for the Department of Homeland Security may seize a shipment.<sup>36</sup> Finally, if a shipment is seized and subsequent legal action is necessary, the Department of Justice may initiate a case and pursue forfeiture proceedings.<sup>37</sup>

In addition to these federal agencies' efforts to implement and enforce the Lacey Act, several private organizations have also come together to create programs that help to enforce the Lacey Act. Several non-governmental organizations have come forward to help push awareness of illegal logging regulations and aid in ensuring compliance of the Lacey Act provisions.<sup>38</sup> Similarly, various other non-governmental organizations interested in environmental awareness about illegal logging and deforestation are "taking an active role by doing their own

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33. *Id.* at 4.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *SCS Legal Harvest Program Frequently Asked Questions*, SCS GLOBAL SERVICES, <http://www.scsglobalservices.com/timber-legality-verification?scscertified=1> (last visited Nov. 6, 2013).



investigations and providing evidence to the enforcement agencies.”<sup>39</sup> Further, in an effort to not only advance the positive environmentally aware message of the Lacey Act, but also to prevent personal liability in the event of a violation, programs have also been created to aid in the compliance of the provisions.

One such program is the SCS LegalHarvest Verification Program, which is “designed for responsible companies who are looking for a systematic way of demonstrating ‘due care’ in sourcing forest products with the goal of eliminating illegally harvested wood from their supply.”<sup>40</sup> The program creates an incentive system by giving recognition to those companies who are in full compliance.<sup>41</sup> However, because Congress vaguely defined the term “due care,” there is no guarantee by any program that a company will not violate the Lacey Act simply by exercising what the company itself considers to be due care. Rather, a company that has a system in place to extract the most amount of reliable information regarding the source of their wood products would be in the best position to prevent a possible violation.<sup>42</sup>

There are several methods that can help companies make sure they would not violate the Lacey Act. One such method would be enrollment in a verification program such as the SCS LegalHarvest, although such programs themselves are not sufficient to ensure compliance and may require further actions to demonstrate the necessary due care as required by the Lacey Act.<sup>43</sup> The sounding principle behind improving compliance lies in awareness and research that companies must have of their suppliers or sources. Companies who want to improve compliance are suggested to “ask its suppliers questions” about their supply chains and sources, conduct “independent research on suppliers,” “consistently [question] suppliers about the origin of their products”, and make “supplier and forest site visits.”<sup>44</sup> Further, it is suggested that companies vigilantly instill systems or policies that efficiently track their products, provide

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39. *Id.*

40. *Id.*

41. *See id.*

42. *Id.*

43. *Fact Sheet: Are You Ready for The Lacey Act?*, WORLD RES. INST. (Dec. 22, 2009), <http://www.wri.org/stories/2009/12/fact-sheet-are-you-ready-lacey-act>.

44. *Id.*

certification and documentation, and maintain clear lines of communication and transparency with suppliers.<sup>45</sup>

Since it passed on May 22, 2008, the Lacey Act amendments have already seen companies commit violations despite compliance suggestions.<sup>46</sup> Companies' run-ins with Lacey Act violations, like Gibson Guitar, who were caught in a major violation shortly after Lacey's implementation, demonstrate the effectiveness and the solidity of enforcement by U.S. agencies on American companies who illegally source their wood products. Gibson Guitar Co. became one of the highest-profile companies to violate the Lacey Act when federal agents raided its factories and storage sites in 2009 and 2011, and found various different types of wood products that were illegally purchased and imported.<sup>47</sup> Although no criminal charges brought, the Department of Justice and Gibson settled, which resulted in Gibson paying various penalties, implementing "a detailed compliance program designed to strengthen its compliance controls and procedures," and giving up any claims to the products and wood seized during the course of the investigation.<sup>48</sup>

The result of the Gibson case can be considered a victory in that it has certainly put the significance, as well as the effectiveness, of the Lacey Act onto the global stage. Also, the consequences Gibson faced provided a wake-up call to other companies who may have previously felt that they, as companies with a similar construct as Gibson in its wood importing practices, would somehow be able to skirt the Act's provisions. However, it is also possible to see that part of the power behind the federal agencies' case against Gibson lies in the fact that much of the violation took place in the United States. The illegally sourced lumber Gibson was accused of importing came from Madagascar and India, but the supplies were imported into the United States and consequently triggered an obvious Lacey Act violation.<sup>49</sup> Although the Lacey Act guards over any illegally sourced wood, as defined previously, that enters into any stream of commerce, not just within the United States, ease of implementation and enforcement certainly exists when an American company is a key player in the violation. However, this does not diminish the ever-present problem of illegal logging that exists throughout the world, and it is when foreign

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45. *Id.*

46. *See id.*

47. Joseph Bonney, *Gibson Guitar, Feds Settle Lacey Act Case*, THE JOURNAL OF COMMERCE (Aug. 6, 2012, 12:30 PM), [http://www.joc.com/gibson-guitar-feds-settle-lacey-act-case\\_20120806.html](http://www.joc.com/gibson-guitar-feds-settle-lacey-act-case_20120806.html).

48. Caitlin Clarke & Adam Grant, *Gibson Guitar Logging Bust Demonstrates Lacey Act's Effectiveness*, WRI INSIGHTS (Aug. 10, 2012), <http://insights.wri.org/news/2012/08/gibson-guitar-logging-bust-demonstrates-lacey-acts-effectiveness>.

49. *Id.*

regulations and foreign countries come into play that the Lacey Act is weakened.

V. THE PROBLEMS OF ILLEGAL LOGGING AND THE SHORTCOMINGS  
OF THE AMENDED LACEY ACT'S DEPENDENCY ON  
FOREIGN FORESTRY LAWS

The problem of illegal logging is becoming one of the biggest contributing factors of global deforestation, and while the trade, sale, and demand for lumber products and plant-derived products continue to grow, instances of illegal logging follow suit. While the United States no longer experiences as many instances of domestic illegal logging as countries such as Indonesia and the Democratic Republic of Congo, importation and engagement in trade of illegally harvested or illegally sourced products still contributes to the problem of illegal logging. Illegal logging has become a huge problem in many tropical countries, where it is estimated that 90 percent of the logging that takes place is illegal.<sup>50</sup>

Illegal logging is particularly prevalent in those countries with little to no regulations on logging rights and logging protocols. These countries often have weak law enforcement or legislative action protecting the species of plants and wildlife that have become so threatened by the activities of illegal logging. Most of the illegal logging in the world is taking place “in the tropical forests of the Amazon basin, Central Africa and Southeast Asia.”<sup>51</sup> Estimates suggest that it is possible illegal logging makes up “50-90 per cent of the volume of all forestry in key producer tropical countries and 15-30 per cent globally.”<sup>52</sup> Meanwhile, there is certainly a lucrative incentive for those involved in illegal logging to continue, since it is estimated that the global economic value of illegal logging could be “between US\$ 30 and US\$ 100 billion, or 10-30 per cent of global wood trade.”<sup>53</sup>

While there are several political, diplomatic, and international law related issues as to why and how illegal logging persists, there are two primary reasons. The first is that illegal logging is too lucrative and too much of

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50. Derek Mead, *Organized Crime is Fueling a Boom in Illegal Logging Worldwide*, MOTHERBOARD, <http://motherboard.vice.com/blog/organized-crime-is-fueling-a-boom-in-illegal-logging-worldwide> (last visited Nov. 6, 2013).

51. *Id.*

52. *Id.*

53. *Id.*

an economic incentive for those involved to consider the long-term financial and environmental consequences of their actions.<sup>54</sup> Participating in illegal logging activities, particularly in countries where there are not many consequences of such an illegal activity, has become a good source of income.<sup>55</sup> Incidentally, many of the countries that possess the richest sources of industrial lumber and timber are also countries with weak regulations, so illegal loggers think of these countries as “productive or commercially valuable.”<sup>56</sup>

The second primary reason illegal logging persists is simply the ineffectiveness of control and regulation. In countries where illegal logging is a large source of income for people, there is little incentive for government to strengthen regulations. The problem lies not only in “weak enforcement and implementation of forestry legislation” but also in the inexistence of any legislation or regulation at all.<sup>57</sup> Weak governments lack the ability or the efficiency to deal with problems of illegal logging and illegal trade of lumber products, and corruption and cronyism within weak governments exacerbate the problem.<sup>58</sup>

The effects of illegal logging reach far beyond environmental impacts. The illegal logging industry hurts local economies and peoples, and undermines the stability and ability of governments to regulate them. Illegal logging bypasses taxes and fees owed to governments, which pushes the price of timber down and thus encourages other loggers to follow suit.<sup>59</sup> As a result, governments suffer more losses from the timber and lumber trade, and corruption and misdirected funds steer attention away from fighting the issue.<sup>60</sup>

Illegal logging also negatively impacts local economies and peoples by undermining the value of a finished product made from legally sourced wood and by physically taking away the forest upon which many local peoples depend on. This creates a big problem and an unwanted social effect, where forest-dwelling communities become exploited or repressed by those who participate in illegal logging and illegal access to local areas.<sup>61</sup> Similarly, those local peoples who created a finished product from

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54. *Logging in the Green Heart of Africa*, WORLD WILDLIFE FUND, [http://wwf.panda.org/what\\_we\\_do/where\\_we\\_work/congo\\_basin\\_forests/problems/deforestation/logging/](http://wwf.panda.org/what_we_do/where_we_work/congo_basin_forests/problems/deforestation/logging/) (last visited Nov. 6, 2013).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Illegal Logging*, WORLD WILDLIFE FUND, [http://wwf.panda.org/about\\_our\\_earth/about\\_forests/deforestation/forest\\_illegal\\_logging](http://wwf.panda.org/about_our_earth/about_forests/deforestation/forest_illegal_logging) (last visited Nov. 6, 2013).

60. *Id.*

61. *Id.*

legally sourced wood and paid the necessary taxes and fees to obtain the wood must sell their products at a higher price than the competition that obtained the wood illegally.<sup>62</sup>

Illegal logging creates unwanted environmental effects on climate and atmosphere as well. It is estimated that “almost 20% of all global CO<sub>2</sub> emissions are caused by deforestation” and that “25% of all emissions reductions called for by 2050 could be achieved by conserving and restoring tropical forests.”<sup>63</sup> In specific regards to logging, cutting down trees and plants worldwide is estimated to contribute as much carbon to the atmosphere as all industrial and residential activities in the United States.<sup>64</sup> It is also estimated that about 13 million hectares of forests are being cut down each year, and might increase if the current rates of deforestation are not tamed.<sup>65</sup>

It is not difficult to see the environmental, as well as social and economic importance of controlling the rate of deforestation, particularly deforestation that results from illegal logging. The Lacey Act has created a strong and symbolic beginning to those preliminary steps of combating the problem. The United States’ active vigilance in passing the amendments came as a welcome change to its image worldwide as not only the world’s largest producer but also the world’s largest consumer of forest products.<sup>66</sup> The United States, although its population only consists of a small portion of global population, makes up one-fourth of global production and consumption for forest products and is one of the largest markets for trade in such products.<sup>67</sup> By being one of the largest markets for trade, the

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62. *Id.*

63. Shiva S. Makki, *Deforestation and its disastrous consequences for climate change and food security*, The World Bank, <http://blogs.worldbank.org/files/climatechange/Deforestation,%20Climate%20Change,%20and%20Food%20Insecurity%28New%29.pdf> (last Nov. 7, 2013); *Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action*, CONSERVATION INTERNATIONAL (Mar. 31, 2006), <http://unfccc.int/resource/docs/2006/smsn/ngo/012.pdf>.

64. *See Global Greenhouse Gas Emissions Data*, U.S. ENVT.L PROT. AGENCY (Sept. 9, 2013), <http://www.epa.gov/climatechange/ghgemissions/global.html>.

65. Eur. Comm’n, *Green Week 2008: Only One Earth*, ENVIRONMENT FOR EUROPEANS, MAGAZINE OF THE DIRECTORATE-GENERAL FOR THE ENVIRONMENT, 2008, at 11, *available at* [http://bookshop.europa.eu/en/environment-for-europeans-pbKHAD08S31/?CatalogCategoryID=Yriep2Ix6ucAAAEvxusQ\\_v3E](http://bookshop.europa.eu/en/environment-for-europeans-pbKHAD08S31/?CatalogCategoryID=Yriep2Ix6ucAAAEvxusQ_v3E).

66. *Facts and Figures*, U.S. ENVT.L PROT. AGENCY (June 27, 2012), <http://www.epa.gov/agriculture/forestry.html#Facts%20and%20Figures>.

67. David J. Brooks, *U.S. Forests in a Global Context*, U.S. FOREST SERVICE, <http://www.fs.fed.us/global/pub/links/global.html> (last visited Nov. 7, 2013).

United States is also susceptible to becoming one of the largest markets for importation of illegally sourced wood. By amending the Lacey Act, the United States symbolically took the first step towards real action against illegal logging.

The strengths of the amendments to the Lacey Act are effectively demonstrated by its efforts to restrict companies that previously could have imported illegally harvested or illegally sourced lumber. However, the Act's dependency on the strengths of foreign laws that identify and protect such wildlife and forestry weakens the force and power behind the Act's efforts. Countries that guard protected species and have weak regulations, weak laws, or even weak punishments, undermine the strength of the Lacey Act amendment's first prong in identifying an illegally sourced product. The Lacey Act identifies that it "does not impose U.S. law on other countries" and that "'illegally sourced' is defined by the content of sovereign nations' own laws."<sup>68</sup> In identifying something as illegally sourced or even possibly triggering a Lacey Act violation, there is a substantial dependency on foreign laws, creating a "catch-22" type problem. Illegal logging is most prevalent in countries where laws and regulations are weak, and the Lacey Act's intention was to deal with this problem.<sup>69</sup> As such, the Lacey Act is dependent on such laws and regulations, which are the source of the problem.

Many countries around the world, particularly those in Southeast Asia, Africa, and South America, are experiencing problems with weak regulation and laws protecting forestry and illegal logging. Indonesia, for example, is a leader in loss of forestland due to illegal logging and deforestation.<sup>70</sup> As the world's largest exporter of timber, Indonesia also experiences extensive deforestation of which it is estimated that around 40 percent is due to illegal logging.<sup>71</sup> Although Indonesia has put forth efforts to combat this problem, much of its exported timber, along with the exports of other regions such as the Congo Basin or the Amazon, end up in the markets of the United States and the European Union.<sup>72</sup> Further, despite efforts such as introducing policy requiring timber companies to be audited for ensuring that their stock are coming from sustainably managed

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68. *The US Lacey Act*, *supra* note 2, at 1.

69. Pervaze A. Sheikh, *The Lacey Act: Compliance Issues Related to Importing Plants and Plant Products*, FEDERATION OF AMERICAN SCIENTISTS (July 24, 2012), <https://www.fas.org/sgp/crs/misc/R42119.pdf>.

70. *Indonesia*, ILLEGAL LOGGING INFO, [http://www.illegal-logging.info/approach.php?a\\_id=85](http://www.illegal-logging.info/approach.php?a_id=85) (last visited Nov. 6, 2013).

71. *Id.*

72. *Illegal Logging*, *supra* note 60.

forests, there is still widespread corruption that reduces the effectiveness of any legislation or enforcement attempts.<sup>73</sup>

The industry of illegal logging is complex and sophisticated in the sense that it “depends on the complicity of officials throughout the entire production chain,” much akin to an “organized criminal group.”<sup>74</sup> However, Indonesia is not alone in experiencing problems such as these. Particularly, it is difficult for Indonesia to “address the growing problem of illegal logging and the associated trade in timber alone.”<sup>75</sup> Another country that has been wracked with problems of illegal logging is the Democratic Republic of Congo. It is estimated that in the Congo, more than 15 million hectares of forest have been destroyed by logging, and the destruction is increasing.<sup>76</sup> Because of this constant depletion of forestry, it is very possible that “by 2050 [. . .] the Democratic Republic of the Congo (DRC) will release up to 34.4 billion tonnes of CO<sub>2</sub>, roughly equivalent to the UK’s CO<sub>2</sub> emissions over the last sixty years.”<sup>77</sup> Like Indonesia, the DRC is home to some of the richest forests in the world, but has fallen victim to weak regulations and laws protecting such forests and has consequently become ravaged by deforestation and illegal logging.<sup>78</sup>

The weaknesses of the amendments to the Lacey Act become apparent when it is recognized that one part of triggering a Lacey Act violation is dependent upon the forestry management laws that are as weak as those in countries like Indonesia and the DRC. When countries have rich forests with high commercial value and harvesting potential, combined with lax regulation, illegal logging is enabled. Illegal logging activities increase when there is “weak inspection and monitoring and [. . .] complex and cumbersome set of regulations which governs forest exploitation.”<sup>79</sup> Lax regulations can vary from simple exploitation of harvesting permits and

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73. See *Illegal Logging in Indonesia: The Link Between Forest Crime and Corruption*, UNITED NATIONS OFFICE ON DRUGS AND CRIME (June 1, 2010), <http://www.unodc.org/unodc/en/frontpage/2010/June/illegal-logging-in-indonesia-the-link-between-forest-crime-and-corruption.html>.

74. *Id.*

75. Wahjudi Wardoyo Suhariyanto & Boen M. Purnama, *Law Enforcement and Forest Protection in Indonesia: A Retrospect and Prospect*, WORLD BANK at 2 (2001), [http://site/resources.worldbank.org/INTINDONESIA/FLEG/20171554/Law\\_Enforcement.pdf](http://site.resources.worldbank.org/INTINDONESIA/FLEG/20171554/Law_Enforcement.pdf).

76. Rhett A. Butler, *Illegal Logging Threatens Congo’s Forests*, MONGABAY (Apr. 11, 2007), <http://news.mongabay.com/2007/0411-congo.html>.

77. *Id.*

78. *Id.*

79. Suhariyanto & Purnama, *supra* note 76.

weak inspection laws to blatant breaches such as falsifying inventory reports or over harvesting.<sup>80</sup> Issuing licenses or permits becomes obsolete when there are insufficient personnel to check the validity and observance of these permits, and even if stricter regulations were put in place, lack of any consequential fines or penalties makes skirting the law easy.<sup>81</sup>

The amendments have significantly increased the penalties of a violation, and the rest of the Lacey Act includes strict regulations and requirements for how to prevent illegally sourced wood from being imported or entering market. However, no wood that is being harvested outside of the United States is subject to these rules so long as the countries in which they are being harvested do not label them as “illegally sourced.” The Lacey Act is a piece of United States legislation that is exercised under sovereign rule, and does not subject other countries to its provisions. Therefore, its strength lies within the confines of the United States legal system, and is weakened by other countries’ deficient legal systems.

## VI. ADDRESSING THE SHORTCOMINGS OF THE LACEY ACT AND ANALYZING ALTERNATIVE SOLUTIONS

Although the Lacey amendments have pioneered global efforts to combat illegal logging, it may lack teeth when the issue to be dealt with is one of global proportions. Regulating illegal logging activity by banning importation, trade, or sale of illegally sourced wood is one that requires global efforts and the participation of multiple countries, not just the United States. One clear solution to the loophole in the Lacey Act amendments created from its dependency on foreign forestry laws would be to make all lumber imported into the United States subject to the laws of the United States when determining if it is illegally sourced, per part one of the test to determine violation of the Lacey Act. As applied, any harvested timber or lumber that would have previously skirted the laws of its country of origin must still pass the United States’ standards as put forth in the Lacey Act. Further, this would make enforcement of the Lacey Act more feasible since all trade or commercial activity regarding forest products would be subject to United States law.

Some critics of the Lacey Act may believe this presents a problem in terms of sovereignty. The concept of sovereignty is that each individual country makes its own rules, laws, and regulations and is not subject to the rules, laws, and regulations of other countries. Since the Lacey Act is United States legislation that was decided and signed into law by the United States, it has legal force only within the bounds of the United

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80. *Id.*

81. *Id.*



States.<sup>82</sup> Subjecting other sovereign nations to the laws of the United States would breach the concept of sovereignty and cause major problems in international agreements and accord.

Further, within the United States, the Lacey Act amendments mobilize various other departments of the United States government in implementing and enforcing the provisions of the act.<sup>83</sup> If somehow the Lacey Act were to subject other countries to its provisions, it would also be subjecting sovereign nations to the governmental agencies of the United States, in clear violation of sovereignty.

However, this issue of sovereignty is not so much of a hindrance as to mitigate the power of the Lacey Act amendments. Although such issue of sovereignty would still apply to the foreign trade or commerce of wood products, anything that passes through the United States would have no such issue. Particularly, even if a wood product were sourced from a foreign country, it is still subject to United States law and regulations when being imported into this country, thus still giving the Lacey Act power. Many other products that are sourced from foreign countries but are imported into the United States go through various levels of scrutiny and regulations in order to be deemed safe or legal to enter the United States domestic stream of commerce.

One example is importation of food, drugs or cosmetics, which must follow the regulations as set forth in the Federal Food, Drug, and Cosmetics Act.<sup>84</sup> In similar fashion to the Lacey Act, 21 USCA § 381 sets forth several standards and requirements that importers of anything that qualifies as a food, drug, or cosmetic must meet before their products enter the United States.<sup>85</sup> One part of the language that exists in the statute states that if an item is “forbidden or restricted in sale in the country in which it was produced or from which it was exported” then it will be refused admission into the country.<sup>86</sup> The remainder of the statute continues on to require importers and manufacturers to follow stringent requirements in order to ensure that their products comply with United States law, and are subject to penalties, fines, sanctions, destruction, and holds, if they are in non-compliance.<sup>87</sup> This language is very similar to that displayed in the

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82. *The US Lacey Act*, *supra* note 2, at 2.

83. *The US Lacey Act*, *supra* note 2, at 3.

84. 21 U.S.C.A. § 381 (2013).

85. *See id.*

86. *Id.*

87. *See id.*

Lacey Act Amendments, and yet continues to operate in the United States with successful effect. Consequently, wood products should be able to go through the same rigorous standards before they are able to enter in the United States.

The primary problem thus is not the regulation of wood that come into the United States, but the regulation of wood products that pass through trade between other countries outside of the United States jurisdiction. As the language of the Lacey Act amendments states, “It is unlawful for any person [. . .] to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce [plants and wood products].”<sup>88</sup> The words “foreign commerce,” which appear throughout the various sections of the statute, indicate that Congress intended that the Lacey Act amendments should have reach beyond the domestic level; banning illegal logging is the intent not only within the United States, but also in foreign countries.<sup>89</sup> However, a United States piece of legislation may not be sufficient to address the shortcomings that exist in weak foreign law that governs regulations and protections of plant and wildlife.

Thus, another solution to address this specific problem is to create an annex or agreement between countries that typically source mass amounts of wood products and the United States. In a sense, such an agreement would put both countries under the responsibility of monitoring the sources and types of wood being harvested. One example is the Forest Annex between Peru and the United States, which was part of the two countries’ free trade agreement and preceded the amended Lacey Act.<sup>90</sup> The Forest Annex “requires the Peruvian government to enact a number of specific provisions to combat illegal logging” where “Peru must track the harvesting, transport, processing, and export of tree species that are protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).”<sup>91</sup> Further, it requires Peru to “fully investigate violations of the agreement’s law and regulations.”<sup>92</sup> However, there is weakness in this annex in that it places a large majority of the responsibility on Peru, while still exposing the United States to the risk of “illegal Peruvian mahogany” that is transported still through other counties such as Mexico or China to “circumvent the system.”<sup>93</sup>

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88. 16 U.S.C.A. § 3372 (2012).

89. *See id.*

90. Paige McClanahan, *The Lacey Act: Timber Trade Enforcement Gets Some Teeth*, INTERNATIONAL CENTRE FOR TRADE AND SUSTAINABLE DEVELOPMENT (Mar. 2010), <http://ictsd.org/i/news/bioresreview/72643/>.

91. *Id.*

92. *Id.*

93. *Id.*

An agreement like the Forest Annex not only raises awareness of the issue of illegal logging in countries that are susceptible to such practices for reasons previously stated, but also creates a channel of mutual effort in combating illegal logging. Although the specific details of the Forest Annex have come under much criticism due to its multiple loopholes, the principle is a good idea that could potentially be broadened and applied to the Lacey Act to strengthen enforcement.

It is not a solution for companies to avoid sourcing from countries that have had a reputation for being high-risk in their logging practices.<sup>94</sup> Many countries that may have had instances of illegal logging activity in the past, such as the Democratic Republic of Congo or Indonesia, are frequently also home to forests that provide the most plentiful opportunity for both illegal and legal harvesting. Similarly, just because a country is considered low-risk does not mean that a company that chooses to harvest there instead is guaranteed to be free from violations of the Lacey Act. It would be poor foreign policy for the United States to create “an official list of ‘high-risk’ countries” that companies should “stay away” from in order to observe the provisions of the Lacey Act.<sup>95</sup> Such policy would not only raise serious economic issues but also create an international discord through inefficient means.

Ultimately, the best solution may be for countries to work together in combating illegal logging in the ways the Lacey Act has demonstrated while possibly creating or highlighting the economic incentives that could be enhanced by such global participation. A global initiative similar to the one set forth in the Forest Annex, coupled with economic incentives for companies and individuals involved in logging activities, can help strengthen the Lacey Act amendments. By following the regulations and respecting plant and wildlife, various logging industries should experience economic gain in the long run.

In the United States alone, curbing the illegal logging practices could save the logging industry at least \$1 billion in losses.<sup>96</sup> Further, “if there were no illegally logged wood in the global market, it has been projected that the value of U.S. exports of [wood products] could increase by an

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94. WORLD RESOURCES INSTITUTE, *supra* note 44.

95. *Id.*

96. *The U.S. Lacey Act: Tackling the Illegal Trade in Timber, Plants and Wood Products, Funding for Implementation in 2012*, ENVTL. INVESTIGATION AGENCY (2012), [http://eia-global.org/images/uploads/The\\_U.S.\\_Lacey\\_Act.pdf](http://eia-global.org/images/uploads/The_U.S._Lacey_Act.pdf).

average of approximately \$460 million each year.”<sup>97</sup> Such economic incentives can surpass the short-lived and environmentally damaging practices of illegal logging, and can provide financial, if not ecological, incentive for countries to work together. Collective action and effort is necessary when dealing with an issue that has a global impact.

Collective action also can allow the United States to further serve as an example for those countries whose forestry and logging laws are weakened by their complexity and loopholes. As previously discussed, foreign countries that experience major problems with logging and harvesting regulation already have “forest management schemes that can be difficult for foreign companies to monitor.”<sup>98</sup> Some companies that harvest may not even fully understand the forestry or logging laws in the countries where they harvest, and it is very possible that the governments who enforce those laws do not understand the laws either. Complexity in the laws does not necessarily mean stringent enforcement or effectiveness, as demonstrated by Indonesia. Indonesia, which is previously mentioned to be a hotspot for illegal logging practices, has over nine hundred laws, regulations, and decrees that govern timber exploitation, transportation, and trade, yet persists in effectively enforcing these laws and helping to stop illegal logging.<sup>99</sup> By working together, countries such as the United States, which may have slightly simplified and exacted the language to create laws that can effectively deter illegal logging, can aid those countries that have not yet reached this goal.

Some international agreements do exist currently, but are weak in form. Further, previous attempts to create doctrines similar to the Lacey Act requiring international cooperation resulted in passive participation, since there were no actual laws that were being violated and subsequently no consequences. A possible remedy could be to establish an international body, such as the United Nations, to enforce the various aspects of the Lacey Act, and to possibly broaden the Lacey Act into an international doctrine. To further the strength behind economic incentives and deepen the economic costs of non-compliance, an international body such as the United Nations could expand the current penalties of the Lacey Act to a global scale, and make it costly for countries to violate the Act.

Currently, the United Nations has in place Project LEAF (Law Enforcement Assistance for Forests), which is a “consortium forests and climate initiative on combating illegal logging and organized forest crime” in collaboration with the INTERPOL Environmental Crime

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97. Sheikh, *supra* note 70, at 2.

98. Rachel Saltzman, Comment, *Establishing a “Due Care” Standard Under the Lacey Act Amendments of 2008*, 109 MICH. L. REV. FIRST IMPRESSIONS 1, 6 (2010).

99. *Id.*

Programme.<sup>100</sup> This method focuses primarily on the criminal prosecution aspect of combating illegal logging rather than focusing on strict economic incentives or penalties for those who do violate the laws. By using the power behind INTERPOL's police force, Project LEAF allows for coordinated enforcement and compliance on an international scale.<sup>101</sup> Such a project provides teeth for further implementation of the various aspects of the Lacey Act amendments, which could be strengthened even more through partnered projects that focus on economic incentives as well.

The amendments to the Lacey Act symbolize a precedent set on a global scale that recognizes the importance of stopping illegal logging and also paves the way for various methods of implementation and enforcements of its bylaws. Current methods and proposed solutions provide a good start to full enforcement, but present loopholes and show that attacking only one aspect of the issue of illegal logging presents incomplete solutions. The best solution for maximizing the effectiveness of the Lacey Act amendments would be a combination of these various propositions.

The Lacey Act amendments perhaps draw its strength from the fact that the Act is a “fact-based statute” that examines the individual circumstances rather than a doctrine for strict enforcement.<sup>102</sup> As such, the amendments provide a symbolic and important basis for cooperation between countries to combat illegal logging by setting in place regulations, when violated, result in real and serious consequences.

## VII. CONCLUSION

The 2008 amendments to the century-old Lacey Act serve as a powerful restriction on illegal logging in the interest of combating the global deforestation that has so strongly contributed to climate change. Although it was only recently introduced into law, the Lacey Act has already shown multiple instances where its strict enforcement and implementation by various agencies and organizations in the United States is effective. However, its shortcoming lies within its dependency on foreign laws and restrictions on identifying illegally sourced products.

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100. *Projects*, INTERPOL (Feb. 2013), <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Leaf>.

101. *Id.*

102. *The US Lacey Act*, *supra* note 2, at 2.

Formerly proposed solutions are not readily feasible and may result in undesirable political and economic effects, but provide useful insight into better possible remedies when combined with economic incentives. The Act currently continues as a vigilant legal restriction on illegal logging primarily in relation to United States commerce while maintaining mainly a symbolic role in regulating illegal logging elsewhere. Nonetheless, the Act's role as the world's first ban on trading illegally sourced timber and plant products is a powerful one and sets an example for the rest of the world that will hopefully result in a collective global effort to combat illegal logging.