

# The US Lacey Act: A civil society perspective

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# Implementation Through Partnership

## WRI

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Protecting the environment with intelligence.

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# Key messages

1. Effective consumer country legislation must combine strong market signal and the right “details”
2. The Lacey Act is already having an impact in high-risk countries and sectors
3. US Industry support for Lacey is generally strong and US government has been responsive
4. Additional enforcement and implementation resources would increase impact, deterrent effect
5. New consumer country policies gradually create a ‘tipping point’ towards legal trade



# Lacey Act overview

- 1900: passage of original Lacey Act
- 2008: passage of Amendments for plants and plant products
- April 2009: phase-in of declaration requirement begins in 6 month intervals
- November 2009: raid on Gibson Guitars facility
- May 2010: Miami seizure of Peruvian pallets



**1. Effective consumer country legislation must combine strong market signal and the right “details”**





*The problem is that somebody  
asks me to smuggle...  
No buyer, no smuggling.*

Franky Chua, Singapore-based timber broker, to EIA/Telapak  
undercover investigators, 2003

# Effective design: Key aspects I

- Broad coverage of Prohibition: The Lacey Act makes it unlawful to trade (import, export, transport, sell, receive, acquire, purchase) any plant or plant product taken in violation of laws of a US State, or relevant foreign laws.
  - The Lacey Act also makes it unlawful to provide false information about plants and plant products.
- “Country of harvest” and species declaration requirement: Importers submit basic information that increases transparency of trade flow info and aids enforcement

# Effective design: Key aspects II

“I’ve consulted with a number of clients who are complying or struggling to comply with the Lacey Act and I can say overall the Lacey Act is having a very healthy effect on the international forest products industry and wood importers in particular. It’s requiring people to ask questions that they’ve never had to ask before.

The requirement to fill out a declaration and to be accountable for the information that’s in that declaration is a critical part of this. It really is the part that requires people to ask the questions that haven’t been asked before and it drives a level of accountability that I don’t see how you get at it another way.”

– *US-based wood products industry consultant (2010)*

# Effective design: Key aspects III

## Strong penalties, including strict liability

**“Knowingly”  
engaged in  
prohibited  
conduct**

**Trade in illegally  
sourced wood**

Criminal felony fine (up to \$500,000 for corporations, \$250,000 for individuals, or twice maximum gain/loss from transaction). Possible prison for up to five years. Forfeiture of goods.

**False import  
declaration**

Criminal felony fine as above, or civil penalty up to \$10,000. Possible prison for up to five years. Forfeiture of goods.

**“Unknowingly”  
engaged in  
prohibited  
conduct**

**Did not exercise  
“due care”**

**Trade in illegally  
sourced wood**

Criminal misdemeanor penalty (up to \$200,000 for corporations, \$100,000 for individuals, or twice maximum gain/loss from transaction). Possible prison for up to one year. OR civil penalty fine up to \$10,000. Forfeiture of goods.

**False import  
declaration**

Civil penalty fine of \$250. Forfeiture of goods.

**Practiced  
“due care”**

**Trade in illegally  
sourced wood**

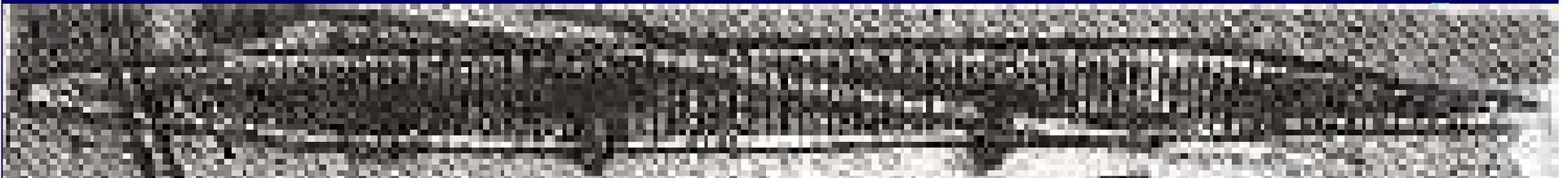
Forfeiture of goods.

**False import  
declaration**

Civil penalty fine of \$250.  
Forfeiture of goods.

# Effective design: Key aspects IV

- Flexibility of “due care” concept
  - Precedent-based; interpretation will depend on source region/species, company size, etc
  - “Evolves” upwards as best practices change: Ex. WRI fiber testing experiments (2010) found “vessels with anatomical features consistent with those of ramin (*Gonystylus spp*) in a page of a coffee table book and in the cover paper of a children’s book. These books were purchased from a U.S. retailer and published by U.S. firms but were manufactured in and imported directly from Indonesia.... In the cover of another children’s book, the tests found vessels consistent with those of mangrove trees (*Rhizophora spp*).”
- Opportunities for citizen input to enforcement





## 2. The Lacey Act is already having an impact in high-risk countries and sectors



# Impact of legislation I

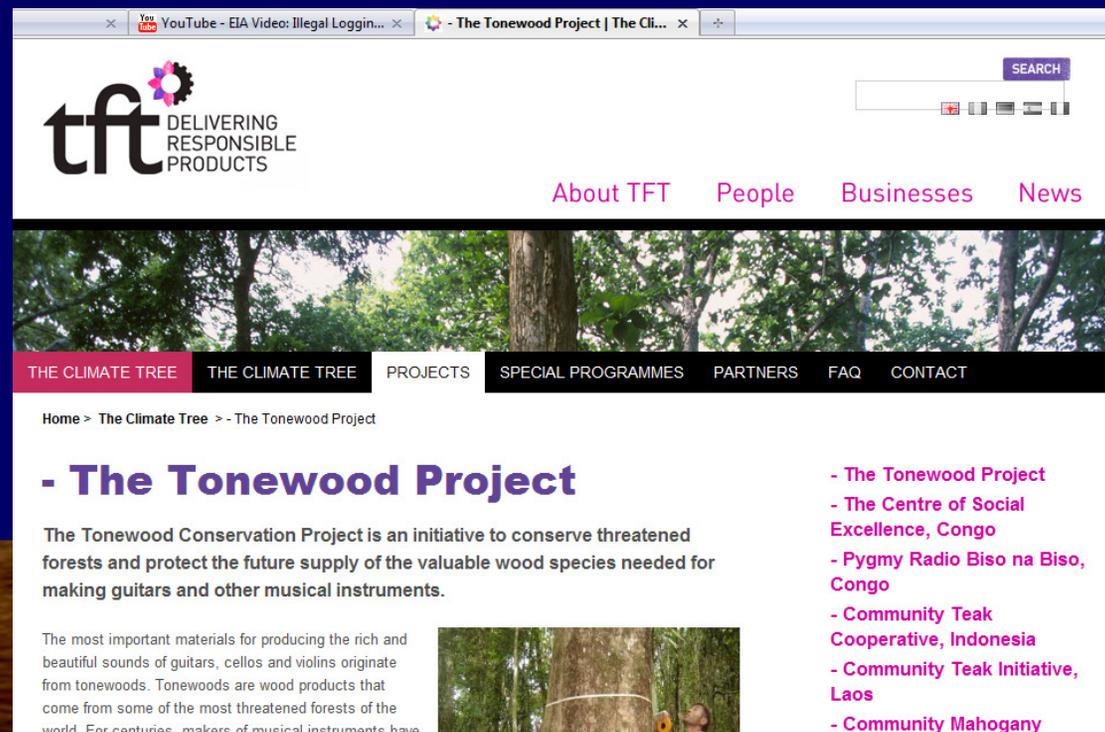
- Combined force of Lacey Act and impending EU Regulation
- FLEGT /VPA processes initiated and invigorated throughout Latin America, SE Asia
- FLA survey (mid-2010): 83.5% of respondents had conversations with suppliers or members about Lacey compliance

# Impact of legislation II

- Industry and gov't outreach on legality; new standards being created
  - US Domestic, e.g. NWFA's Responsible Purchasing Policy
  - Exporter, e.g. Vietnam's HAWA
  - Chinese government engagement
  - Chinese industry: WWF GFTN 2010 survey (of FSC CoC-certificate holders) indicated 86% of companies surveyed had "demand" or "Strong demand" for legal materials

# Impact of legislation III

- Sectors exposed to enforcement action (ex. Music instruments) turning away from high-risk countries, seeking third-party assistance in some cases



The screenshot shows a web browser window displaying the website for 'tft DELIVERING RESPONSIBLE PRODUCTS'. The page is titled '- The Tonewood Project' and features a navigation menu with links for 'About Tft', 'People', 'Businesses', and 'News'. Below the navigation is a large image of a forest. A secondary navigation bar includes 'THE CLIMATE TREE', 'PROJECTS', 'SPECIAL PROGRAMMES', 'PARTNERS', 'FAQ', and 'CONTACT'. The main content area is titled '- The Tonewood Project' and contains the following text:

The Tonewood Conservation Project is an initiative to conserve threatened forests and protect the future supply of the valuable wood species needed for making guitars and other musical instruments.

The most important materials for producing the rich and beautiful sounds of guitars, cellos and violins originate from tonewoods. Tonewoods are wood products that come from some of the most threatened forests of the world. For centuries, makers of musical instruments have

On the right side of the page, there is a list of project locations:

- The Tonewood Project
- The Centre of Social Excellence, Congo
- Pygmy Radio Biso na Biso, Congo
- Community Teak Cooperative, Indonesia
- Community Teak Initiative, Laos
- Community Mahogany



**3. US Industry support for Lacey is generally strong and US government has been responsive**



# Industry and Lacey I

Process to pass 2008 Amendments:

- Consultation with experts and agencies
- Negotiations among industry and environmental group stakeholders
- Precedent-setting coalition
- Result: bi-partisan support in Congress



# Industry and Lacey II

- Post-passage coalition: 3 statements
- July 2009 consensus statement : *“We pledge to work cooperatively to ensure smooth implementation of the Lacey Act.”*
- June 2010 statement, 57 signatories
- Joint lobbying for appropriations

## CONSENSUS STATEMENT OF IMPORTERS, NON-GOVERNMENTAL ORGANIZATIONS, AND DOMESTIC PRODUCERS ON LACEY ACT CLARIFICATIONS

### Introduction

We believe that the Lacey Act declaration requirement, if properly implemented, facilitates achieving the intent of the Lacey Act to curb trade in illegally harvested plants. The processes

# Industry and Lacey III

- Forest Legality Alliance commissioned independent Survey in 2010 re Lacey Act and EU regulations

- *“Three years ago, only a few companies were concerned about (illegal logging). And now every company that is serious about exporting to the US and EU is.”*
- *“There is a real wave of interest right now...even in places like the Central African Republic, we are hearing that there is a change in behavior.”*

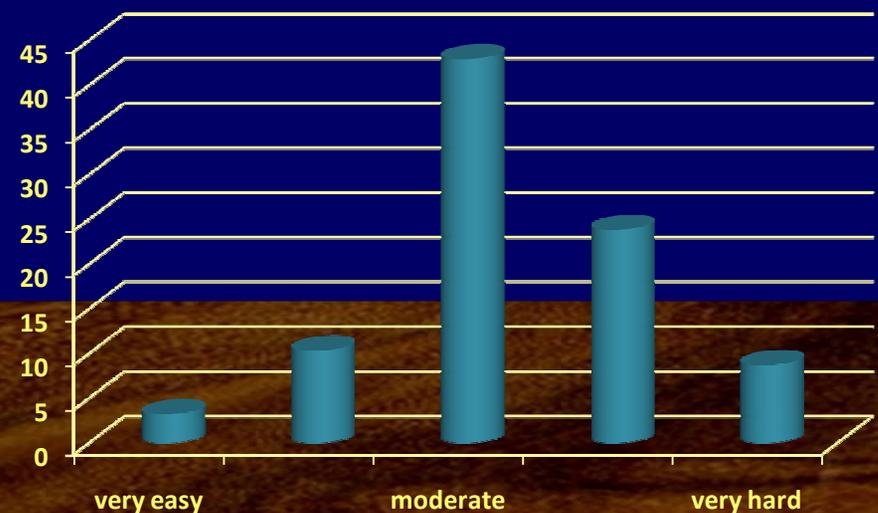
- The paperwork is complicated at first, but defining "due care" is the real concern

- *“Like with OSHA where when something first comes out we all think we are going to die, but then once you’ve done it a couple of times you realize it isn't that bad.”*
- *“There is filling out the form, the declaration, which is simple, but then there is showing due care, and there is no real guidance for that.”*

# Industry and Lacey IV

- “Cost” to industry hard to determine due to factors including sectoral variation and lack of specified “due care” guidelines
- Difficult to say what is “Lacey Act compliance” and what is simply good supply chain management

*FLA survey response re difficulty of compliance with Lacey Act (both due care and declaration)*



# FLA: A public-private partnership

- Secretariat (WRI & EIA)
- Intended membership: any organization or business with a stake in having or providing information to support legal supply chains
- Launched in June 2010
- Industry Advisory Group (initial members):





**4. Additional enforcement and implementation resources would increase impact and deterrent effect**



# Early enforcement I

Ebony and rosewood cut from national parks,  
Madagascar (2006-2010)

Export to China (>90%) and Germany (Teodore  
Nagel , Inc.)

Trade records show Gibson Guitars imports from  
Nagel (2008-2010), even after field trip to  
Madagascar

Gibson factory raided in Nashville, Tennessee,  
November 2010, under the Lacey Act

Investigation still running:  
penalties could include jail time,  
fines to \$500,000



*The***Guardian**

**Gibson Guitars Raided for  
Alleged Use of Smuggled Wood**

Friday, November 20, 2009



# Early Enforcement II

- Forfeiture of Peruvian hardwoods (seizure in Tampa, May 2009, finalized July 2010)
  - Incorrect classification and failure to submit declaration form, possibly intentional
  - Tip-off by business associate
  - Due care deemed inadequate: “a company that specializes in international shipments should be well versed in the applicable laws that govern such transactions and should also be up to date on any amendments to the laws...”
- Anecdotal declaration enforcement



# Resources for implementation

- Dedicated funds thus far appropriated to international outreach and capacity building
- FY12 President's budget requests dedicated USDA funding for Lacey Act implementation
- Enforcement: steep learning curve among agencies; personnel are the key resource
- Lacey Act must function through *deterrence*



**5. New consumer country policies gradually create a 'tipping point' towards legal trade**



# Creating a tipping point

- US Lacey Act and EU FLEGT/Regulation have amplified each others' impact
- Australia currently considering parallel policy
- Need for engagement with other major consumer and manufacturing countries
- Policy coherence with G8 and climate commitments (eg REDD monies in Indonesia)

**TABLE 1: DEFORESTATION AND ILLEGAL LOGGING RATES IN KEY TROPICAL COUNTRIES**

Tropical Forest Countries with High Estimated Rates of Deforestation Emissions	% of Global Deforestation Emissions*	Receiving FCPF Funds?	Illegal Logging in Natural Forests Estimates	
			Over 50%	20-50%**
BRAZIL	25%		●	●
INDONESIA	23%		●	
NIGERIA	6%	●	●	
CONGO DR	4%	●	●	
BURMA	3%		●	
ZAMBIA	3%		●	
CAMEROON	3%	●	●	
PHILIPPINES	2%		●	●
VENEZUELA	2%		D.N.A.	
BOLIVIA	2%	●	●	
GHANA	2%	●	●	
TANZANIA	2%		●	
ECUADOR	2%		●	
PAPUA NEW GUINEA	2%	●	●	●
HONDURAS	2%		●	●
VIETNAM	<2%	●		●
PERU	<2%	●	●	●
MEXICO	<2%	●		●
GABON	<2%	●	●	
NICARAGUA	<2%	●	●	

\* Source = Nicholas Institute 2008 (courtesy of NRDC)

\*\* Both columns marked where differing estimates exist. Data compiled from various sources available upon request.



*“Expecting or asking one country to combat illegal logging while at the same time receiving or importing illegal logs of course does not support efforts to combat these forest crimes. In fact ...allowing import and trade [in] illegally cut timber and associated products could also be considered as an act to assist or even to conduct forest crime.”*

- Indonesia's former forest minister Mohamad Prakosa



# Thank you

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[www.forestlegality.org](http://www.forestlegality.org)

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