

## LACEY ACT MYTHS AND FACTS

Most of the arguments raised in opposition to any changes to the 2008 Lacey Act Amendments are either distortions of the truth or downright false. The following provides a rebuttal to points raised by opponents of the RELIEF Act

**MYTH:** Supporters of the RELIEF Act are working in league with illegal loggers to gut the 2008 Lacey Act Amendments.

**FACT:** Under the RELIEF Act, government authorities will still have full authority to go after criminals illegally harvesting and selling trees and plants. This point is further reinforced by the Congressional Budget Office (CBO). In its conclusion that the RELIEF Act has no significant impact on the federal budget, CBO states that the bill “would not significantly change the way the agency enforces the Lacey Act,” and “would have a minimal effect on the amount of civil penalties collected under the act.”

Supporters of the RELIEF Act represent a broad cross-section of American companies, many of them small businesses. They include home-builders, furniture manufacturers, boat-builders, makers of musical instruments, and retailers of everything from salad bowls and furniture to lumber and toys. They are on record as supporting the goal of the Lacey Act Amendments to combat illegal logging, and they oppose any change to the law that would undermine that objective. They merely seek a few modest, sensible, and targeted reforms to address several problems in the law that are recognized as unintended, but which threaten their businesses and the millions of American jobs they represent.

**MYTH:** The RELIEF Act will open the floodgates to illegal imports, resulting in job losses in the U.S. forest products industry.

**FACT:** Under the RELIEF Act, government authorities will still have full authority to go after criminals illegally harvesting and selling trees and plants.

The RELIEF Act would help protect millions of American jobs represented by the U.S. companies and industries adversely-impacted by the unintended consequences of the Lacey Act Amendments. The proposed reforms to address those unintended consequences merely add some modest protections to companies actively working to comply with the law without compromising enforcement against illegally-harvested wood and plants or jobs in the forest products sector.

**MYTH:** The RELIEF Act substantially reduces the penalties against illegal harvesting of trees and plants.

**FACT:** The provision referenced in this argument is no longer in the RELIEF Act. Government authorities still have full authority to go after criminals illegally harvesting trees and plants. This point is further reinforced by the Congressional Budget Office (CBO). In its conclusion that the RELIEF Act has no significant impact on the federal budget, CBO states that the bill “would not significantly change the way the agency enforces the Lacey Act,” and “would have a minimal effect on the amount of civil penalties collected under the act.”

**MYTH:** By grandfathering any plant products assembled or imported before the 2008 Lacey Act Amendments, the RELIEF Act creates a massive loophole that criminals will exploit.

**FACT:** The environmental NGOs, hardwood industry, and organized labor that make this argument supported an identical proposal that was included in three earlier stakeholder consensus statements on proposed changes to the Lacey Act. At this point in time, the amount of pre-2008 wood in the market is miniscule. This provision merely corrects a glaring omission in the 2008 Lacey Act Amendments that, if not corrected, could subject antiques and used products containing wood and plant material to Lacey Act enforcement – a situation that was clearly not the intent of Congress.

**MYTH:** Language in the RELIEF Act limiting the applicable foreign laws to those “directed to the preservation and conservation of plants” is unnecessary because the 2008 Lacey Act Amendments are already limited to a “discrete set of foreign laws.”

**FACT:** The 2008 Lacey Act Amendments cover any foreign law that: protects plants; regulates the theft of plants; regulates the taking of plants from a park, forest reserve, or other officially protected or designated area; regulates the taking of plants without or contrary to, required authorization; requires the payment of appropriate royalties, taxes, or stumpage fees; limits the export or transshipment of plants. Even the government agencies admit that this is a huge and unknowable universe of foreign laws and regulations from 196 countries at the national, sub-national, and local level. This language would cover as many as 9,000 laws and regulations in Indonesia alone.

**MYTH:** The RELIEF Act will allow parties to keep stolen wood.

**FACT:** Theft and illegality as defined in the 2008 Lacey Act are not synonymous, and, as shown by recent enforcement actions, the Lacey Act covers a huge range of violations that do not constitute theft. Also, under the RELIEF Act, a federal judge will decide whether circumstances warrant the return of seized wood to a company, which must demonstrate that it exercised due diligence and otherwise acted in full compliance with the law. Finally, in the case of stolen merchandise, there is an identifiable property interest in the goods, which can be returned to the rightful owner. That is not the case in most instances with wood that has triggered a Lacey Act violation. There is no alternative “rightful owner” of a dresser that contains dowels made with wood that may have been illegally harvested. If seized, that dresser would be auctioned off by the government, and put back into the stream of commerce.

**MYTH:** The Lacey Act amendments have reduced our trade deficit with China for forest products from \$20.6 billion in 2006 to a \$600 million surplus in 2010, and tipped the scale in favor of American wood products.

**FACT:** First, there is no evidence supporting this claim. However, there is plenty evidence that the huge decline in home construction and consumer spending from 2008-2010 due to the economic recession was the main reason behind the drop in imports from China.

Second, this statement suggests that the forest products industry’s real motive in opposing the RELIEF Act is to take advantage of the recognized problems with the Lacey Act Amendments to erect a trade

barrier and harass legitimate imports. Moreover, softwoods are frequently mentioned in arguments about protecting the American wood-product industry under Lacey. However, we import softwoods (pine, fir, and spruce) mainly from Canada and Scandinavia, not from tropical countries.

The Lacey Act is an environmental law and should not be used or justified as a trade barrier to imported wood products, especially from Canada and the Scandinavian countries that are very low risk for Lacey Act violations. Otherwise, the United States is in violation of its obligations under international trade law, which would threaten billions of dollars in U.S. exports and American jobs with trade retaliation, and undermine the legitimate environmental goals of Lacey.

**MYTH:** The 2008 Lacey Act Amendments were “carefully written.”

**FACT:** The 2008 Lacey Act Amendments largely bypassed the normal legislative process and was slipped into the 2008 Farm Bill after having only one hearing in a House subcommittee and no debate or consideration in the Senate.

**MYTH:** A broad group of stakeholders including retailers were involved in crafting the 2008 Lacey Act Amendments legislation.

**FACT:** The 2008 Lacey Act Amendment was largely drafted by lobbyist for environmental NGOs, the anti-import hardwood industry, and organized labor, with little or no input solicited from affected stakeholders in American industries that import and use wood, and no involvement from Customs and Border Protection (CBP), a key enforcement agency. Only one retail company, a lumber retailer, was present in the discussions before the Lacey Act Amendments became law. Most American manufacturers and retailers, as well as CBP, became aware of the Lacey Act Amendments, and its potentially sweeping impact, only after it had been signed into law after being slipped into the 2008 Farm Bill.

**MYTH:** The RELIEF Act will roll back the 2008 Lacey Act amendments and encourage organized crime to engage in illegal logging.

**FACT:** Under the RELIEF Act, government authorities will still have full authority to go after criminals illegally harvesting and selling trees and plants.

The RELIEF Act would merely clarify vague and confusing provisions in the 2008 Lacey Act Amendments so that American companies that use wood know what their legal obligations are, and have some modest measure of legal protection when they can show they are fulfilling those obligations. These changes will not create any loophole for criminal activity, will maintain full authority for our government agencies to target and combat illegal logging, and, therefore, will continue to be an effective deterrent to criminals. No criminals will be exempt from prosecution under the RELIEF Act.

**MYTH:** The RELIEF Act will do away with the import declaration for all but a tiny fraction of plant imports.

**FACT:** Under the RELIEF Act, the limitation for the import declaration to solid wood would actually substantially increase the number of declarations filed. According to APHIS, it currently receives 40,000 declarations a month, which would increase to as many as to 320,000 (an 8-fold increase) a month if the declaration requirement just covered solid wood. If all possible products containing wood or plant material were required to file import declarations, the number of declarations filed would increase to 1 million a month. That would cover 4,500 individual codes as opposed to 1,300 for just solid wood – hardly a tiny fraction of plant imports.

**MYTH:** The RELIEF Act will devastate the U.S. hardwood industry.

**FACT:** This argument raises a fundamental question - who are the main foreign competitors of U.S. hardwood products that hardwood producers claim are such a great threat to their industry and jobs?

Tropical hardwoods such as Rosewood, Ebony, Teak, and Brazilwood, don't grow in the United States and are valued by U.S. industries that use them specifically for their unique properties. Australia produces a large variety of Eucalyptus species, which aren't grown commercially in the United States. Although illegal logging is a problem in Russia, Russian wood is mainly boreal forest softwoods (pine, spruce, fir, larch) and birch.

These woods are very different from the temperate hardwoods produced in the United States such as oak, cherry, beech, hickory, maple, and ash. The hardwood industry acknowledges that tropical hardwoods differ significantly from temperate hardwoods in color, hardness, grain pattern, and luster. Moreover, U.S. manufacturers, such as boat builders, do not view temperate hardwoods as acceptable substitutes for tropical hardwoods. One of the main competitors to U.S. wood products is Canada, a low-risk country for Lacey Act violations and the acknowledged world leader in sustainable forestry management. The other principal producers of temperate hardwoods are European countries, also very low risk for Lacey Act violations.

**MYTH:** The RELIEF Act will undermine the import declaration as a critical incentive for businesses to track what they are importing.

**FACT:** Exposure to Lacey Act prosecution exists with or without the declaration. Government authorities still have full authority to go after criminals illegally harvesting and selling trees and plants whether or not they are covered by the declaration requirement, and businesses have to exercise due diligence in managing their supply chains to avoid civil and criminal liability. However, the declaration is such a heavy-handed regulatory encumbrance for both the government and U.S. businesses that even the Animal and Plant Health Inspection Service (APHIS) – the federal agency responsible for its implementation – described it as “burdensome,” “prohibitively expensive,” and “difficult, if not impossible” to comply with. As currently structured, the declaration has imposed unnecessary costs on businesses and the federal government without enhancing enforcement. We believe an alternative approach is possible that will encourage businesses to exercise due diligence in their supply chains while easing the burden and cost of the current system on both government and business.

**MYTH:** The Lacey Act Amendments protect national security by keeping money out of the hands of our enemies, such as the Taliban.

**FACT:** This argument is a cynical scare tactic. There is no evidence that the Taliban is involved in the illegal lumber trade, nor do we import any significant amount of wood from the Middle East, Afghanistan, or Pakistan. The large number of American companies and industries supporting the modest and sensible changes in the RELIEF Act would never endorse something they believed would help terrorists.

**MYTH:** By allowing a company or individual to petition a court for return of wood or plant products seized under the Lacey Act, the RELIEF Act mixes up remedial civil forfeiture proceedings with punitive criminal forfeiture. Civil procedure already allows court access for claimants to seized property, and raids and seizures are conducted under search warrants, based on affidavits outlining the grounds for the search.

**FACT:** The RELIEF Act will simply restore Congress' original goal of balance, fairness, and protection under the Lacey Act to those who exercise due care in compliance with the law, by providing them a day in court when their property is seized and subject to forfeiture through no fault of their own. This change will provide no protection or loophole for those who are active or complicit in illegal harvesting of trees or plants.

Meanwhile, the confused argument about legal procedures offered as a reason to oppose this modest change misses the point and is rebutted by Department of Justice (DOJ) own statements regarding the civil forfeiture action in the Gibson Guitar cases:

It is unlawful to harvest or export the Defendant Property under Malagasy law and therefore, the strict liability provision of the Lacey Act requires a decree of forfeiture, a recognition that the Defendant Property is contraband and the striking of the Claimant's [Gibson] ownership claim for lack of standing.

Moreover, according to DOJ, the only decision for the court is whether the property is contraband. But DOJ's contention that any property seized under Lacey is, according to the strict liability provisions in the law, per se contraband, removes the court from making that determination. Therefore, the only argument that a claimant could make in court in response to a seizure is that no foreign law or regulation was violated. However, this meager legal protection is largely meaningless given the vagueness of a party's legal obligations under Lacey, and the fact that DOJ decides whether a foreign law was violated, not the foreign government.