

**Lacey Act Amendments of 2008: Clarification Needed for Business**

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Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs  
House Natural Resources Committee  
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Good Morning Mr. Chairman and members of the Committee. My name is Travis Snapp, and I am the Chief Operating Officer of Benchmark International.

I am pleased to be testifying on the Lacey Act before the House Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs today.

I am here as a member of the International Wood Products Association. Established in 1956, IWPA is the leading international trade association for the North American imported wood products industry, representing 200 companies and trade organizations engaged in the import of hardwoods and softwoods from sustainably managed forests in more than 30 nations across the globe. Association members consist of three key groups involved in the import process: U.S. importers and consuming industries, offshore and domestic manufacturers and the service providers that facilitate trade. IWPA advances international trade in wood products through education and leadership in business, environmental and public affairs.

IWPA has also been active in the Lacey Act Coalition, a broad group of domestic manufacturers, retailers, and distributors. This Coalition has been reaching out to Congress since 2011 with four specific Lacey Act issues they would like addressed. They represent a wide cross section of industries, from small family businesses to multi-national corporations that are greatly impacted by this law.

My company, Benchmark International, has certainly been impacted by the Lacey Act. Originally founded over 60 years ago as Pittsburgh Testing Labs, Benchmark International is one of the oldest wood products certification and testing agencies in operation today. We are a global leader in providing independent third party certification of wood products, materials testing, research and development assistance, international regulatory compliance program management and engineering services.

I would like to speak to you about my professional experiences with the Lacey Act as a product and process certifier.

## **Practical Issues with Lacey Act Implementation: The Complexity of Supply Chains and the Scope of Foreign Laws**

I first became involved with the Lacey Act in 2008 when Congress passed an amendment that added plant and plant products to the pre-existing Lacey Act framework. It was immediately clear that this would affect the wood manufacturing sector within the United States and abroad.

As soon as the 2008 Amendments were passed, Benchmark International began working on a proprietary Lacey Compliance Verification Program (LCV). This LCV program is designed to provide independent, third-party audits to assist manufacturers and importers in demonstrating “due care”, which the Lacey Act defines as the “degree of care that a reasonably prudent person would exercise under the same or similar circumstances.”<sup>1</sup>

Under this program, Benchmark International offers the necessary training, detailed record keeping, on-site investigation and verification to ensure that a company has exercised due care when sourcing raw materials for products or importing finished goods from abroad. Our program gives downstream customers a higher degree of confidence in the products they purchase.

Since Benchmark began offering the LCV program in 2009 we have had 33 manufacturing facilities from around the world request to enroll in our program.

However, due to the complexity of the supply chain and the broad scope of the Lacey Act, I have been forced to turn 29 of them away.

To be clear, this is not to imply that there is illegal material running rampant in supply chains. Rather it demonstrates that supply chains are complex and ranging across continents for individual manufacturers, making it difficult to identify every chip of wood used to produce a finished good from plant or plant products to the extent the Lacey Act in its current form requires.

Several manufacturing facilities, if enrolled in our program, would have required 2 to 3 full time staff working 40 hours per week just to keep track of the raw material stream used to produce finished products. This complexity is not confined to the manufacturing facilities that have approached me; companies around the world and in the United States utilize raw materials from a variety of sources, both domestic and foreign.

It isn't just the raw materials that make it difficult to certify to Lacey. The vast scope of foreign laws included under Lacey are unmanageable in scope - Benchmark International contracts 6 legal firms who track only the laws related to wood export, processing, concessions, and cutting

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<sup>1</sup> Animal Plant Health Inspection Service, United States Department of Agriculture. *Lacey Act Primer*. [http://www.aphis.usda.gov/plant\\_health/lacey\\_act/downloads/LaceyActPrimer.pdf](http://www.aphis.usda.gov/plant_health/lacey_act/downloads/LaceyActPrimer.pdf). Page 17.

in a mere 6 countries. That limited scope alone accounts for over 1000+ laws (and growing), and has cost my clients upwards of 300,000 USD since 2009 when we began our program.

These 1000+ laws and regulation laws do not scratch the surface of what the Lacey Act's true scope includes. When a speeding ticket for a truck transporting logs, an overweight vehicle, or a customs issue between two governments are all considered Lacey Act violations (a felony that is punishable by potential jail time and hundreds of thousands of dollars in fines) from my perspective as a certifier, that is unreasonable and unachievable. It causes uncertainty for American businesses that attempt to operate legally and in compliance with the Lacey Act's intent.

### **Scope of Foreign Laws: A Workable Solution to Aid in Compliance**

My recommendation to this subcommittee is to clarify the scope of the Lacey Act as it relates to plant and plant products so as to provide assurances for businesses making every effort at due care. This can be done by amending the 2008 Amendment to narrow its scope, by compiling a list of all foreign laws that fall under the Lacey Act, or by a combination of both.

Businesses have been told not to worry, that the government would never prosecute over an infraction as minor as an overweight transport - but a customs misclassification was in fact the subject of a raid and seizure of goods. American businesses, the jobs they support, and the consumers they supply deserve clarity on the scope of foreign laws that fall under the Lacey Act. I would ask Congress to legislate these changes, so that the businesses I certify can have a chance at compliance with the Lacey Act's mandates.

### **Contraband Should Be Clarified**

Further clarity should be provided for items seized in an alleged Lacey Act violation. Under the Department of Justice's current interpretation of the Lacey Act, material seized is considered "contraband"- as illegal as cocaine. While cocaine is instantly recognizable as illegal *per se*, wood - or finished products produced of or incorporating wood - are not.

This fundamental difference is integral. Because of this designation, items seized under the Lacey Act are deemed contraband. And much as an individual would be unable to petition a court for the return of cocaine, a company is not granted standing in court to petition for the return of their seized goods (assuming they can demonstrate due care).

It is imperative that the companies I certify can know they have some protection under the law should a Lacey Act case be brought against them, or someone in their supply chain.

## **Clarifying Contraband: A Reasonable Solution**

Not one association or reputable company would ask for those who engage in illegal activity to be given a legal pass - if a Lacey Act violation does occur, if a company or individual has clearly and knowingly traded in illegal material, then I and IWPA would support the appropriate penalties under the law. Illegality need not be rewarded. Just as I sit before you today giving testimony on the implications of the Act as currently written, I would testify against any entity domestic or foreign who knowingly violated the Act.

Ethical companies that have demonstrated their attempt to comply as best they can with the Lacey Act should be accorded a day in court to contest the seizure, demonstrate the due care they took, and have an avenue of recompense. Designating wood as contraband effectively severs this route, and does not allow the right to a fair trial.

This is a wrong that needs to be righted. Wood should not be classified as contraband; a legislative fix is required to ensure that American businesses have the right to a day in court to demonstrate the measures of due care they performed.

## **Pre-2008 Material: How to Perform Due Care?**

Improved clarity should be extended to other areas of the Lacey Act as well. There is still uncertainty with products harvested, imported, and/or manufactured prior to the 2008 passage of the Lacey Act Amendments. To expect any point in the supply chain - importer, distributor, or consumer - to comply with a law in regards to a product produced prior to the law's enactment is unreasonable. Determining the country of origin and/or species in a product pre-2008 can often be difficult, if not impossible. Legislation is necessary to clarify this point, and ensure that antiques and other pre-2008 material can be bought and sold.

## **Congressional Action Needed**

Congress should take up Lacey Act reform. I understand firsthand the practical difficulties businesses face that rely upon imported and domestically sourced wood and wood products under the Lacey Act. An unknowable and unmanageable scope of laws, retroactive liability, and the denial of a trial if allegations are made - this law, while well intentioned, has some practical flaws that desperately need legislative attention.

I want to emphasize that I support the goals of the Lacey Act - I don't want illegal logging; I am by nature and profession a conservationist. But in order for this law to function as Congress

intended it to - protecting the forests, weeding out the bad actors, and allowing legal trade to continue - fixes are urgently needed. We need a common sense approach to this issue.

It is imperative that the scope of laws be narrowed to those that actually deal with plant and plant products, that the concept of contraband be clarified so that business may have their day in court, and that pre-2008 material be exempted from Lacey Act declaration requirements. Businesses, the jobs they support, and they consumers they serve deserve that.

Thank you, Mr. Chairman and committee members, for the opportunity to appear before you today. I stand ready to answer any questions you might have.