The Lacey Act and Its Impact on Wood Products

The Lacey Act was originally passed in 1900 (yes, 1900) to eliminate illegal trade in wildlife. In 2008 Congress amended the Act beyond wildlife to cover plants. The new law makes it illegal to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plants that were taken in violation of any U.S. or foreign laws that protect plants. The Lacey Act specifically states that it applies to trees as a way for the US Congress to support efforts to combat illegal logging.

Illegal Logging Impact
The Lacey Act does three main things that will impact not only illegal logging but those that source wood and wood products from other countries:
1. Prohibits all trade in plants and plant products, including furniture, paper, and lumber, that are illegally sourced from any U.S. state or foreign country.
2. Requires importers to declare the country of origin of harvest and species name of all plants contained in their products.
3. Establishes penalties for violations of the law, including forfeiture of goods and vessels, fines, and jail time.

Some possible examples of violation of this act include, but are not limited to:
• A US company imports wood flooring from country X made from timber that had been harvested without valid permits in country Y.
• An exporter intentionally mislabels a shipment of lumber to the US as a less valuable species in order to avoid higher tariffs.
• A US company purchases paper made from pulp sourced via illegal logging practices in country Z.
• A veneer importer does not identify the correct country (or potential countries) of harvest origin for the species used.

The new law will require US importers of products originating from trees to declare:
• The genus and species of the woody material.
• The country where the original tree was harvested.
• The quantity and value of the woody material.

In November 2009, The New York Times reported that agents of the United States Fish and Wildlife Service served a search warrant on Gibson Guitar manufacturing in Nashville, TN. The article notes that although “agents did not say what they were searching for or if anything was

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removed from the plant…some hardwoods used in making premium guitars…from the rain forests of Madagascar and Brazil, have recently been banned under a federal law called the Lacey Act.”

There are some stiff penalties for violation of the Lacey Act as shown in Figure 1. The threshold value of plants imported or exported must exceed $350 to be classed as a felony. A “knowing violation” means knowledge of facts and illegality, not of the specific law violated.

So, if you are importing wood or products that contain wood, what should you do to avoid running afoul of the Lacey Act? The following excerpt is from The New Lacey Act: What You Can “Do” to Show “Due Care”. It is presented here in shortened form and has been used with permission of the Oregon Wood Innovation Center Newsletter. The author is Greg McCue, Esq. of Steptoe & Johnson, LLP in Washington, DC. (If you want the complete article that provides detailed actions to take, email phil_mitchell@ncsu.edu and request more on the Lacey Act.)

Companies can protect against the penalties prescribed by the Lacey Act if they can demonstrate the use of “due care.” What does “due care” mean?

What steps will prove “due care”? The Lacey Act provides no checklist or safe harbor set of actions that would guarantee that the due care standard has been met. Whether “due care” was exercised will be judged by U.S. enforcement officials on a case-by-case basis. In fact, companies that specialize in wood products will be expected to take extra care because they will be considered knowledgeable experts.

By implementing a compliance plan, including some of the strategies below, tailored to a specific wood product and sourcing pattern, companies can use “due care” as a shield to protect against these potentially devastating penalties. This is especially important now, when the changes to the Lacey Act are relatively new, and U.S. enforcement agencies may intend to make a few examples in order to demonstrate to Congress and the public that the new law is being enforced in full (see above regarding Gibson Guitars).

What is “Due Care?”
The Lacey Act does not list any required steps for a company to demonstrate that it has used due care. There is no checklist or explicit “safe harbor” provision in the Lacey Act that would guarantee safety from penalties. “Due care” is a standard used in other areas of U.S. law to require persons or companies to take precautions that are reasonable to their particular situation. The discussions in Congress leading up to passage of the Lacey Act amendments made this clear, saying that “due care” would mean “that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.” In other words, the level of care that is “due” will depend on the particular circumstances, including the specific product, the source and the sophistication of the company involved.

The discussions in Congress also made clear that taking all the facts into consideration means that the level of care required will be “applied differently to different categories of persons with varying degrees of knowledge and responsibility.” In other words, a first time importer, new to the forest products industry, likely would be held to a relatively low standard of care. However, a long-standing importer, expert in the forest product industry, would be expected to know, ask and do more in the exercise of due care.

How to Show Due Care
Because “due care” is a flexible standard that depends on all the circumstances, there is no single step or even combination of steps that will completely guarantee safety from penalties.

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However, companies can and should assemble a file of materials, based on their specific situation, in order to show that the company complied with U.S. law and to provide ready evidence in the event a due care argument needs to be made against a proposed penalty. Assembling such documents after a penalty is proposed is almost always much more difficult and much less effective. Below are several suggestions on how to build such a file.

**Research the specific situation.** Companies should research U.S. government and environmental group websites, industry publications, newspapers and similar sources to create a file on whether the species, region or product relevant to them is mentioned in connection with illegal logging. Wood harvested in a country (or region) that has been the subject of illegal logging reports likely has a somewhat higher risk of being noncompliant and a higher risk of Lacey Act enforcement. Companies involved with these products should consider extra steps to demonstrate due care.

**Collect certifications.** Certainly useful, but there is no guarantee that such certification will be considered due care.

**Consider participating in sustainable forestry programs.** Companies can leverage these programs by collecting information from the program administrators on how legality of harvest is verified and documented. However, such certification is not required by the Lacey Act and will not serve as “get-out-of-jail free” cards.

**Traceability or chain-of-custody programs can be of assistance.** These records would be strong evidence of due care to confirm the legality of harvested wood.

**Consider a site visit.** Personal visits by an official of the company, with notes and digital photos maintained in the compliance file can be powerful evidence of due care, especially when combined with other actions described above.

**Periodically test your products.** Companies periodically should pull physical samples of merchandise and subject them to testing to determine the wood species and any other characteristics that would confirm the accuracy of reported origin. (Editor’s Note: Congress requires genus and species determination, which is quite challenging to impossible for even some domestic woods, such as the oaks. Also, there is no known method to easily ID the origin of a wood sample.)

**Assemble sample document packages.** A drill that imagines notice of a Lacey Act violation has been served on the company. The company should assemble the documents that would be used to show the care that had been exercised as to those particular shipments, or how those shipments were covered by an overall program of due care. The document package should be reviewed by a senior company official or outside expert.

**Request a legal opinion.** The Lacey Act does not detail or list the laws (in or outside the US) that could apply. Individual companies or trade associations could commission a report by an expert in the relevant laws of the US and foreign countries of interest to describe what those laws are. These reports would be used by companies to make their compliance files highly specific and create a strong showing that there was no reason to think that their particular products ran afoul of the specific laws of the relevant countries.

**Review and add detail to your commercial documents.** The first exposure U.S. government officials have to a product line or shipment likely will be the commercial documents such as the invoice, packing list and the bill of lading. Companies should review these documents to see whether they can be improved or clarified to tell a complete story. At a minimum, documents that appear complete, comprehensive and internally consistent are less likely to be chosen by U.S. enforcement officials for examination and questions.

**Negotiate insurance or letter of credit agreements.** If a supplier confidently asserts that its products comply with the Lacey Act standards, purchasers should consider asking the supplier to provide an insurance policy or letter of credit to the benefit of the purchaser if Lacey Act penalties are applied. Purchasers may not often have the negotiating power to accomplish this, but it would constitute real financial security if achieved.

This list does not contain every step that could be taken, nor is it necessary (likely impossible!) to take every one of these steps. Company personnel should assess each specific product and shipment pattern and make a judgment about the right combination of compliance steps for that situation.

### A Look in the Crystal Ball

By David Ashcraft

Director of Development and College Relations, College of Natural Resources

(David came to NC State from the pulp and paper industry, so while this two-part article has a viewpoint from that industry, it should be of interest to anyone purchasing logs or dependent on lumber production.)

The good news is that ownership of forestland will continue to be a good investment. It would not be a surprise if several forest products companies are bemoaning the fact that they have sold their forests. The prices of land haven’t really declined as other investments have, despite low stumpage prices. This fact suggests that smart people are betting on the forests. The value of land has never been zero; equities can’t make the same claim.

Logging contractors will benefit from the trends; stumpage prices will increase. Stumpage prices for pulpwood in North Carolina are the lowest of any region in the U.S. and these low prices are probably the reason that the five major North Carolina pulp and paper mills are still in operation today. An increase in the stumpage price for pulpwood will put pressure on the pulp mills. Sivicultural practices will consider future energy markets, and many of the largest customers by volume will not be pulp mills or sawmills. For the forest products industry, we could call this decade the “decade of opportunity.” In this issue I will set the economic scenario with likely future trends. In the June issue some specific trends related to the forest products industry will be presented.

1. **Higher energy costs.** Whether it is next year or 10 years from now, the price of oil will double or triple from its current $75/barrel. We do not have the reserves to support a growing world economy. The
oil based economy as we knew it throughout the 1900’s is gone. The shortage of oil will continue to have a major bearing on national defense and the development of cellulosic alternatives for oil-based products. (The military is currently drafting policy papers focused on purchasing goods and services locally, increasing the military’s use of bio-fuels and self sufficiency for military bases.) Over time, biomass value will increase; landowners should benefit from the increased price but others in the cellulosic supply chain may not.

2. Global increase in demand for goods – manufacturing will increase. There will be a shortage of goods due to a shortage of raw materials.

3. Some manufacturing, including furniture, will return to the U.S. due to the high transportation costs. Companies will not import raw materials to the extent they do today.

4. The U.S. share of world GDP will continue to fall, stabilizing at 20% of world GDP. Economic output from Brazil, Russia, India and China will continue to increase.

5. Significant increase in inflation - perhaps a major problem, due to high government and personal debt, a shortage of manufactured goods on a world-wide basis and higher energy costs.

6. Higher interest rates. They can’t go any lower.

7. Higher average unemployment than the last decade.

8. Higher taxes.

9. Major failure of Medicare, Medicaid and healthcare unless something is changed.

10. The U.S. dollar will be weaker on average going forward than the last 25 years.

11. Terrorism and major world incidents will increase leading to increased emphasis on self sufficiency for the U.S.

12. Pulp mill production will stabilize at about 50 million tons annually (50% of its peak production rate). The biggest losers will be newsprint and other printing and writing grades.

13. Increased emphasis on sustainability – benefiting the forest products industry.

14. Higher prices for forest land. All trends mentioned above are favorable for higher land prices.

15. No change in the greed and selfishness of people.

The second part of David Ashcraft’s article will be in the June issue of NC Value Added Wood Products.

Rebound Guide After the End of the Great Recession

By Harry Watt
Business Improvement Specialist
N.C. State Univ. Wood Products Extension

Business cycles have booms and busts that affect long term conditions for manufacturers of cabinets, furniture and millwork wood products. Often the set of opportunities and problems change such that businesses have to adjust their business strategies to cope with the changes of the market in order to remain successful.

In the new decade of the 2010’s we will find business conditions vastly different than those of a few years ago. Surviving wood products businesses of the Great Recession that are best prepared in the future may be those who were proactive during the recessionary period to make adjustments to align themselves for future opportunities.

This article discusses several strategies and proactive activities that wood products manufacturers can undertake now that will help them when business conditions improve after the end of the Great Recession.

1. Finance. Implementing stronger financial controls can lead to growth in bottom line profitability without investing more money in the company.

a. During sales negotiations with prospects and customers, address payment issues to insure that payments are received on time. It is good practice to clearly spell out the payment agreement to avoid having customers make payment later than expected. Create a formal payment strategy that outlines several acceptable payment plans so you can be flexible with customer needs and not eliminate the chances of making a sale.

b. It is important to build up a cash reserve that can reduce the need to borrow funds. Banks in the Great Recession do not want to continue credit lines to wood products manufacturers unless they have outstanding credit ratings.

c. This cash reserve can serve to cover shortfalls in accounts receivable and can support purchasing resources at bargain prices when opportunities occur.

2. Marketing. Recessions are the best time to cultivate better relationships with customers, vendors and others in the industry.

a. Most markets shrink during recessions but rapidly expand when better times return due to the “Follow the Leader” effect. Wood products companies often want to follow a conservative business strategy and let others lead the way. This strategy can backfire when a follower is not ready to follow new market opportunities when they quickly arise. Thus the marketing strategy must include methods to remain alert to customer and market needs and opportunities such that a formal system of scanning the market must be done weekly and included in the ordinary work routine.

b. Markets often react favorably when a company can offer a new product quickly that meets their needs. An effort to review a company’s product development process will offer big rewards when time to market is shortened and lower cost new products can be developed.

c. “Better/Faster/Cheaper” is a great mental framework to use when analyzing a company’s current products and services in order to find those improvements that will lead to greater sales and increased profit margins.
Finding a way to produce with significant savings is often well rewarded in the market. US consumers and businesses respond well to “cheaper” as a business strategy. Out of the box thinking can often find a cheaper way. Often the way to cheaper involves figuring out what features specific customers do not value and stripping them out of the product to develop a cheaper product. Cheaper and having flexibility to manufacturer to a customer’s specific order in a make-to-order manufacturing scheme can often move a company into an industry leadership position.

Local markets may be the area to target in the long term future as marketing costs are lower than national markets and local markets are easier to make deliveries.

It pays to create an ongoing system of conducting marketing research on the industry, the general economy, competitors, etc. in order to identify business opportunities wherever they may occur.

3. Operations. A good review of operations will lead to lowering manufacturing costs and freeing up financial resources.

a. “Dead” inventory and equipment can be liquidated for cash when these assets are not contributing to the company’s bottom line. One does need to be sure to look at how these assets can be used to serve customers with new products, new markets, etc. before casting them aside.

b. Attaining a better flow of product throughout the operation will yield faster processing times for orders and lower the cost of manufacturing. The goal is to reduce stops, waits and delays in order to speed up the flow of products. The flow of products should be linked to orders so there is a direct link to demand of products.

c. Slow times are a great opportunity to work on employee training, motivation and support of the company. One can create a matrix chart with the names of employees on the left side and skills across the top. It is always interesting to review what employees have which skill sets that the company values. A good way to improve labor productivity is to empower employees and reduce the amount of supervision and indirect labor costs.

d. Looking at ways to clean up storage and manufacturing spaces can often free up space for new production areas. When most businesses spend $30 a square foot to create new manufacturing space, it pays well to clean up existing space that is cluttered with “dead” stock and equipment and convert it to productive manufacturing space.


a. There are many wood species off the beaten path that offer new looks, interesting working properties and lower costs than what the local lumber distributor may carry. Minor species Eastern US hardwoods (beech, sycamore, sweet gum, black gum, tupelo, wormy red maple, hackberry) offer significantly lower costs when purchased in truckload quantities.

b. Buying in larger quantities but less often can lower materials costs. An economy of scale in lumber buying is achieved when buying a truckload of lumber. Buying units or broken units significantly increases lumber prices and may increase the cost of lumber from 25 to 50% as compared to buying in truckload quantities.

Taking the time to strengthen a wood products company during the current Great Recession can lead to business success when the recession is over.

Wood is Wonderfull! Now Go and Tell the Next Generation

By Nate Irby, Graduate Student
North Carolina State University

Enrolling students into such a specific program like Wood Science & Forest Products is requiring a calculated display of finesse. The underlying problem is the generational gap or barricade of appealing to the target audience: 18 year old students. What are students these days interested in? Desire and interest are more often the dominant foundational elements deciding a student’s path to education and subsequent future success. Although common sense is a scarcely pondered element of a student’s decision tree in reference to making academic curriculum decisions, common sense equals wood products, and wood products equals common sense. The wood products industry provides a plethora of opportunities for students; the “word” just has to be projected and properly received by the prospective student. Quid Pro Quo: Manufacturing utilizing wood as a raw material is indeed a “green” process. Wood is: recyclable, biodegradable, and RENEWABLE. It is the ultimate sustainable material currently used in construction, furniture, heating, and decorative items. Aligning the student with a technical education based on the constituents, interactions, and the potential of wood, into a “green” industry simply equals common sense. The author humbly asks the reader to consider this concept and promote an education in wood products to potential students waiting around every corner. (Note: NC State University’s Department of Wood and Paper Science is now the Department of Forest Biomaterials—our mission within the wood products program remains the same).
Upcoming Wood Products Workshops from NC State University

Using 3-D SketchUp Design Software to Design Wood Products – April 22 in High Point, NC

Principles of Wood Gluing – April 29 in Princeton, WV

Using 3-D SketchUp Design Software to Design Wood Products – May 13 in Hickory, NC

Understanding Real “Green” Finishing for Wood Products – May 20 in Princeton, WV

Beat the Recession with New Business Ideas for Cabinets, Furniture and Millwork – June 3 in Princeton, WV


Upholstery Frames Using Lumber and Plywood – November 4, 2010 in Hickory, NC

For additional information on these workshops, contact Harry Watt at (704) 880-5034 or harry_watt@ncsu.edu

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Seen on the Web

Briefly, here are three stories in the past few months from Furniture Today online magazine. Each is a reason to build quality furniture in the United States.

1) To control mold in their Vietnam warehouse, a large furniture importer has installed controls that will maintain a 62% relative humidity (RH). To maintain dimensional stability, many American manufacturers try to maintain a 40% RH or about 8% equilibrium moisture content (EMC). At 62% RH the EMC is about 11%.

2) A large importer is building a dining room furniture factory in Bangladesh. The average RH during July through September in 2009 was 84%, or an EMC of about 17%. I do not think there will be glossy finishes on those tables.

3) The cost of containers from China have doubled to tripled over the past year. As Furniture Today reported in their Feb. 23 issue, the cost from Asia to the West Coast was about $1,000 for a 40-foot container last spring, but at least $2,000 to $2,500 today. The higher cost is resulting from a reduction in shipping capacity as carriers have reduced their costs by reducing available space and asking for more money.

Strategies for the New American Furniture Industry by Phil Mitchell and Harry Watt is available at: http://www4.ncsu.edu/~pmitchel/publication.htm

Southeastern Dry Kiln Club Meeting Set

The Southeastern Dry Kiln Club will meet in Hickory, NC on Thursday, May 6, 2010. Contact phil_mitchell@ncsu.edu for additional details.

Directory of North Carolina’s Value Added Wood Products (Self Listing Web Page)

NC State University Wood Products Extension office is promoting companies that manufacture wood products made in North Carolina. For maximum benefit to our industry, we encourage shops and manufacturers to self-register in our online directory. Please take a few minutes to fill out the form and list your company in the Directory of North Carolina’s Value Added Wood Products Manufacturers: http://www4.ncsu.edu/~pmitchel/directory_email_form.htm.

Access the most recent directory at: http://www4.ncsu.edu/~pmitchel/vadirectory.htm.

Wood Products Extension

The mission of Wood Products Extension within the Department of Forest Biomaterials (formerly Dept. of Wood and Paper Science) at NC State is to increase the competitiveness and profitability of North Carolina’s wood products industry, improve markets, and increase consumer understanding of wood products and their proper use. Find us on the web at: http://www.ces.ncsu.edu/nreos/wood/

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