THE LACEY ACT AMENDMENTS AND UNITED STATES’ POLICING OF INTERNATIONAL TRADE

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I. INTRODUCTION

The issue of the illegal logging trade has stayed quietly out of the public eye for the past several years.1 Forests have become crowded out of public consciousness by bigger, more immediate global issues, such as the economy, terrorism, and global-warming.2 When a little known United States law called the Lacey Act was amended in 2008 to address illegal logging, few outside the logging industry took note.3 That changed in August 2011, when the famous Gibson Guitar company was raided for the second time by federal agents for “fraudulently labeled” ebony that was illegally exported from India.4

2. Id. Ironically, “global warming should be driving a new focus on the primary importance of retaining forests” because the loss of the planet’s forest cover is considered to be one of the primary causes of global warming. Id.; see Deforestation Causes Global Warming, FOOD AND AGRIC. ORG. OF THE UNITED NATIONS (Sept. 4, 2006), http://www.fao.org/newsroom/en/news/2006/1000385/index.html (commenting that at least a quarter of greenhouse gases released into the atmosphere each year is caused by deforestation).
When the United States amended the Lacey Act, it became the first country to adopt a law making it illegal to import plants or plant products that are acquired in violation of another country’s laws. The amended law aims to control the demand side of the illegal timber trade, and as the United States is one of the largest consumers of wood and wood products in the world, it follows that it fuels demand for illegal timber. In 2006, the estimated value of U.S. consumption of potentially illegally-sourced timber was $3.8 billion. By closing off the largest market for timber, the Lacey Act Amendments are expected to have a substantial effect on the illegal logging trade.

For domestic and foreign industries, the raid on Gibson Guitar brings into focus the potentially over-burdensome compliance costs that the Lacey Act Amendments carry with them. As other countries consider adopting similar laws to the Lacey Act, questions concerning the overall global effectiveness of laws like the Lacey Act are raised. First, these laws only target the demand-side of the illegal logging equation, without touching the supply-side factors that make illegal logging profitable. Second, a patchwork of such laws in all major import countries would create huge compliance burdens for the companies making legal imports.

7. Lacey Act Background, ENVT'L INVESTIGATION AGENCY, http://www.eia-global.org/forests_for_the_world/Lacey_Act_Background.html (last visited Oct. 25, 2012) [hereinafter EIA]; INECE, supra note 6, at 2–3.
8. See INECE, supra note 6, at 2–3, 9 (explaining how new requirements will greatly improve the transparency of the pathway of wood entering the United States).
10. See DOUGLAS & SIMULA, supra note 1, at 75 (pointing out that unilateral measures like the Lacey Act are binding on importers and not exporters).
11. Id. at 74; Lacey Act, RETAIL INDUS. LEADERS ASS’N, 1 (June 22, 2012),
In Part II, this Comment describes the Lacey Act and how the 2008 Amendments modified the pre-existing statute. Part III discusses the illegal logging trade and the reasons behind amending the Lacey Act, including the environmental impacts and organized crime, as well as the impacts of illegal logging on the United States’ domestic industry and prior international efforts to stop illegal logging. Part IV analyzes some of the implementation issues within the Lacey Act Amendments, specifically the lack of a de minimis exception provision in the statute, as well as the inadequacies inherent in the model of Lacey Act as a solution for ultimately stamping out illegal logging. Part IV also examines steps that the international community should take as a part of a multilateral agreement that fully addresses the problem of illegal logging.

II. THE LACEY ACT AMENDMENTS

A. The History of the Lacey Act

The Lacey Act of 1900 represents one of the United States’ earliest attempts at wildlife protection and targeted trafficking in “illegals wildlife, fish, and plants.” The word “plant” in earlier versions of the statute only encompassed endangered plants and non-timber plant species. Industry and environmental groups lobbied for the 2008 Amendments. The American wood-products industry argued that illegal timber “resulted in unfairly low prices for imported wood” which consequently hurt U.S. jobs. Prior to the passage of the 2008

http://www.rila.org/email/Lacey-Act.pdf ("[T]he Lacey Act requirements could pose an unworkable burden on importers and raise a significant barrier on trade.").


Lace}y Act Amendments, no U.S. law to prevent the importation or sale of illegal wood in the United States.\textsuperscript{15} Numerous calls for laws prohibiting the sale of illegally sourced timber have been made,\textsuperscript{16} and the United States statute is one of the first of its kind internationally.\textsuperscript{17}

As a part of the 2008 Amendments, Congress expanded the Lacey Act’s definition of “plant.”\textsuperscript{18} The 2008 Amendments also made it illegal for a person or organization to “import, export . . . or purchase in interstate or foreign commerce any plant . . . taken in violation of any Federal, State, tribal, or foreign law that protects plants” and “to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act.”\textsuperscript{19} Importers now must also file an import declaration form for certain plants and plant products, and the form must accompany all shipments into the United States.\textsuperscript{20}

\textsuperscript{15} EIA, supra note 7 (“The problem [became] so pervasive that the U.S. Capitol building itself came close to hanging Honduran mahogany doors at high risk of illegal origin.”). Besides the Lacey Act Amendments, the U.S.-Peru Free Trade Agreement of 2007, which went into effect in 2008, “prohibit[s] the import into the United States of timber and other plants or plant products obtained or exported in violation of foreign conservation laws” and “obligate[s] Peru to strengthen its capacity to enforce regulations on forest management and timber trade, and to conduct audits and investigations of Peruvian timber producers and shipments upon the request of the United States.” David R. Downes et al., International Environmental Law, 43 INT’L LAW. 837, 852 (2009) (discussing Free Trade Agreement, U.S.-Peru, Apr. 12, 2007). This multilateral agreement is “unique in international law.” Id. at 852.


\textsuperscript{17} Illegal-Logging, supra note 5.

\textsuperscript{18} Lacey Act FAQ, supra note 13, Question 42.

\textsuperscript{19} Implementation Plan, supra note 12 (emphasis added).

B. The 2008 Amendments

The biggest change in the Lacey Act is the new definition of the word “plant.”21 Under the prior version of the statute, a “plant” was (a) “any wild member of the plant kingdom, including roots, seeds, and other parts thereof (but excluding common food crops and cultivars) which is indigenous to any State[,]” and (b) endangered according to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)22 or state law.23 Now, a plant is defined as “any wild member of the plant kingdom, including roots, seeds, parts, and products thereof, and including trees from either natural or planted forest stands.”24 Three categories of plants are exempt — common cultivators other than trees and common food crops, scientific specimens used only for research or laboratory work, and plants that are or are going to be planted or replanted.25

C. “Prohibited Acts” Under the 2008 Amendments

This Comment focuses on the sections of the Lacey Act

21. PERVAZE A. SHEIKH, CONG. RESEARCH SERV., R42119, THE LACEY ACT: COMPLIANCE ISSUES RELATED TO IMPORTING PLANTS AND PLANT PRODUCTS 2 (2012) (“The 2008 amendments . . . also expand the definition of a plant to include any plants (including foreign plants), whereas before it referred only to plants indigenous to any state or associated commonwealths, territories, or possessions of the United States.”).


involving foreign law violations.26 Under section 3372(a)(2)(B), the Lacey Act now makes a person criminally liable if they:

“import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—any plant

(i) taken, possessed, transported, or sold in violation of . . . any foreign law . . . that protects plants or that regulates—

(I) the theft of plants;

(II) the taking of plants from a park, forest reserve, or other officially protected area;

(III) the taking of plants from an officially designated area; or

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation . . . any foreign law; or

(iii) taken, possessed, transported, or sold in violation of any limitation . . . under any foreign law, governing the export or transshipment of plants.”

The unusual feature of the 2008 Amendments is that a violation of U.S. law occurs through a violation of foreign law.28 Essentially, the mechanism for violating this section of the Lacey Act is solely based on foreign law. This means, for instance, that a U.S. company that imports a shipment of wood that was illegally cut down, say, from a nature preserve in Indonesia, but otherwise has complied with all import regulations that pertain to U.S. law, is now criminally and civilly liable in the United States.


D. The Labeling Requirement and the Import Declaration

Another addition to the Lacey Act is the import declaration requirement for plant products.29 Section 3372(f) requires that each plant shipment be accompanied by a declaration form in order to be imported into the United States.30 The declaration must contain the scientific name of the plant (including the genus and species), the value of the importation, the quantity of the plant, and the name of the country from which the plant was taken.31 The Secretary of Agriculture and the Secretary of the Interior are responsible for delineating the regulations to carry out this section of the act.32

E. Penalties and Sanctions

There are three basic types of penalties under the Lacey Act—civil, criminal, and forfeiture.33 Civil penalties may be assessed for a sum up to $10,000 “against a party who in the exercise of due care should have known of the illegal nature of the plant . . . or who knowingly commits a false labeling offense or knowingly violates the declaration requirements.”34 An unknowing violation of the import declaration has a penalty of up to $250.35

Criminal penalties range from misdemeanor charges to felony charges.36 The degree of a criminal penalty under the Lacey Act hinges on a defendant’s knowledge and the illegality

33. 16 U.S.C. §§ 3373–3374 (2006); Lacey Act FAQ, supra note 13, Question 41.
35. 16 U.S.C. § 3373(a)(2) (Supp. II 2008); Lacey Act FAQ, supra note 13, Question 41.
of the defendant’s conduct. A felony under the Lacey Act occurs when the defendant, knowing the timber involved is illegally acquired, then “knowingly imports or exports” in violation of the Lacey Act or “knowingly engage[es]” in conduct that involves (a) the sale or purchase of, (b) the offer of sale or purchase of, or (c) the intent to sell or purchase plants with a market value in excess of $350. A felony carries a fine of up to $250,000 for individuals and $500,000 for organizations or twice the gross gain or loss, and up to five years in prison, or both per violation.

A misdemeanor under the Lacey Act occurs when a person “knowingly engages in conduct prohibited by” the Lacey Act and should have known in the exercise of due care that the plant was illegal. A misdemeanor carries a fine of up to $100,000 for individuals and $200,000 for organizations, or up to one year in prison, or both for each violation.

Finally, all illegally obtained timber is subject to strict-liability forfeiture to the United States Government “notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution.”
III. ILLEGAL LOGGING—A GLOBAL PROBLEM

A. What is Illegal Logging and Why Was the Lacey Act Amended?

Illegal wood is “defined as wood that is sold below market price or wood cut in violation of treaties, laws and regulations.”

Illegal logging activity consists of (a) harvesting in parks or reserves, (b) harvesting outside or in excess of concession limits, (c) failure to pay royalties or taxes, (d) intentional or misclassification or undervaluation of traded products, (e) violation of export bans, (f) harvesting protected species, (g) corruption and bribery, and (h) imports from illegal sources. At least ten percent of all logging is estimated to be illegal, with illegal wood being “purchased . . . for one-half the cost of legally harvested and documented wood products.”

Though the illegal logging trade can involve woods that are legal species and readily available like oak or pine, the rare woods involved in the trade are protected species that are incredibly valuable. The Madagascar wood trade in ebony, for instance, has been called the “equivalent of Africa’s blood diamonds.” The Lacey Act Amendments are meant to attack the issue of illegal logging on four fronts: protecting the environment, helping conservation efforts, fighting organized


45. Combs, supra note 43; SENECA CREEK, supra note 44, at 19. There is an estimated $150 billion world trade value for wood products, meaning the impact of illegal wood hovers at around 15 billion dollars. Id. “This includes only the impact on production and trade of logs, lumber, and wood panels, and does not include the impact on secondary wood products, furniture, or pulp and paper production and trade.” Id.


47. See Combs, supra note 43 (indicating the goal of the amendments is to protect
crime, and protecting American jobs.

B. Environmental Protection Impacts: Deforestation and Conservation

The amount of global deforestation is vast, “total[ing] nearly 9.4 million hectares per year.” The impact from heavy deforestation caused by logging encompasses everything from landslides and property destruction to destroying biodiversity in deforested areas and increasing global carbon emissions. One must keep in mind that not all deforestation is per se bad, as it can be done legally for agricultural purposes that are “economically and socially desirable.” To determine the desirability of deforestation, one must look at the local mix of economic motivations. Illegal deforestation can be carried out by many types of actors for many different purposes ranging from “corporate agricultural interests to ranchers to poor slash-and-burn farmers desperately seeking a livelihood.”

Unchecked, illegal logging has become a huge problem for countries like the Philippines and Thailand “where valuable forests).

48. EIA, supra note 7.
50. See Combs, supra note 43 (estimating $460 million was lost in the U.S. in 2007 because of illegally harvested wood).
52. WORLD BANK, supra note 51, at 2; DOUGLAS & SIMULA, supra note 1, at 198 (“Deforestation must be slowed significantly if there is to be any change of bringing anthropogenic emissions of greenhouse gases down to the levels needed to avoid catastrophic climate change.”).
53. WORLD BANK, supra note 51, at 13.
54. DOUGLAS & SIMULA, supra note 1, at 202.
55. WORLD BANK, supra note 51, at 13.
timber from unprotected forests has almost disappeared.”\textsuperscript{56} Much of this logging is done in blatant violation of existing forest laws.\textsuperscript{57} Weak legal protections and corruption are especially damaging for endangered forests.\textsuperscript{58} In western Madagascar, a study by World Wildlife Fund Madagascar found that “only six species of rosewood are left from previously 15[,] . . . [n]o rosewood trees with a trunk diameter of more than 30 centimetres have been found[, and] [t]hree species of rosewood are very unlikely to regenerate.”\textsuperscript{59} The loggers of Madagascar’s forests do not stop at felling endangered trees; they also hunt the endangered lemur population.\textsuperscript{60} Despite these findings, the Malagasy government has continued to authorize the export of rosewood.\textsuperscript{61} The “plundering of Madagascar’s forests, particularly the protected areas” threatens biodiversity, hurts the local population by taking away jobs, and damages popular tourist sites.\textsuperscript{62}

\textbf{C. The Role of Organized Crime and Government Corruption}

Organized crime also plays a large part in the illegal logging industry.\textsuperscript{63} Considering the huge financial incentives at stake,
this should come as no surprise, as there can be a “wide gap in cost between legitimate, legally procured timber and illegal timber.”64 The market for this wood consists of the developed, industrialized nations where seventeen percent of the world’s population resides; this seventeen percent consumes three-quarters of the world’s traded timber.65 The magnitude of these countries’ appetite for timber is only expected to grow, with “[t]he three dominant industrial wood importing markets—Western Europe, Japan and North America—... all expected to more than double their net imports of wood products by 2020.”66 China’s market for wood is also booming.67 This huge, growing global market for wood therefore provides enormous financial incentives to engage in illegal logging, and it is little wonder that organized crime has infiltrated the logging industry.68

Weak and corrupt local governments have supported the rise of organized crime in the illegal logging industry. These governments, usually in smaller developing countries, partner up with transnational logging corporations and then adopt a hands-off approach in their dealings with these companies that helps to facilitate illegal logging.69 More than a “fifth of the world’s wood comes from countries that have serious problems enforcing their timber laws.”70 Any attempts at enforcement of timber laws in these countries end up hampered by the undue

64. SENeca CREEK, supra note 44, at ES-2.
65. CUT & RUN, supra note 56, at 4.
66. ROYAL INSTITUTE, supra note 16, at 10; see also CUT & RUN, supra note 56, at 4 (noting that “hardwood production rose by 54% between 1966 and 1988”).
67. ROYAL INSTITUTE, supra note 16, at 10 (reporting that China is “the world’s second largest consumer of forest products by value, and by volume it ranks second in consumption of wood-based panels, second for paper and paperboard products and third for sawnwood”).
68. See Khatchadourian, supra note 51, at 64 (“[The flow of illegal wood has caused the emergence of] an entire criminal branch connected with the preparation, storage, transportation, and selling of stolen timber.”)
69. ROYAL INSTITUTE, supra note 16, at 12.
70. Khatchadourian, supra note 51, at 66.
political influence of ex-politicians and ex-military officers, poor government policies, and poor enforcement systems.\textsuperscript{71} Traditionally, local politicians have used timber concessions as a form of political capital to reward allies and extend patronage with little thought to environmental concerns.\textsuperscript{72}

Examples of these situations are numerous.\textsuperscript{73} For instance, an in-depth investigation into Japanese and Malaysian logging companies in Papua New Guinea found a range of offenses from “[a] widespread abuse of power, corruption of cabinet ministers, transfer pricing as a standard practice, offences against local community rights, and blatant violations of regulations on the forest floor.”\textsuperscript{74} The judge who headed the investigatory report ended up becoming the target of an assassination attempt, while a corrupt official named in the report was later named the deputy prime minister.\textsuperscript{75} Meanwhile, little changed with the commission’s findings, and illegal logging has continued to be aided and abetted in Papua New Guinea.\textsuperscript{76} The estimated loss to national income in Papua New Guinea from illegal logging is around $180 million.\textsuperscript{77}

Compounding the problem of organized crime and corrupt local governments is that “tropical forests are very often regarded by economists as a resource that can kick-start an economy in a post-conflict or economically vulnerable country.”\textsuperscript{78}

\begin{thebibliography}{99}
\bibitem{71} ROYAL INSTITUTE, supra note 16, at 12; \textsc{Cut & Run}, supra note 56, at 11.
\bibitem{72} \textsc{Cut & Run}, supra note 56, at 11.
\bibitem{73} \textsc{Id.} at 9–19.
\bibitem{74} \textsc{Id.} at 12–13.
\bibitem{75} \textsc{Id.} at 13.
\bibitem{76} \textsc{Id.}
\bibitem{77} \textsc{See id.} (requiring conversion from 300 million Australian dollars at a 1.675 Australian dollar to 1 US dollar exchange). Since the publishing of the commission’s report, logging in Papua New Guinea has become more concentrated, with a Malaysian company named Rimbunan Hijau controlling eighty-six percent of logging. \textsc{Id.} Additionally, a new plan for national forests ended up setting aside more than half of the forests in the country for logging, tripling existing logging concessions to even more economically unsustainable levels. \textsc{Id.}
\end{thebibliography}
Unfortunately, these plans often end up facilitating illegal logging and corruption, causing even more deforestation and poverty while not leading to the expected economic benefits.\textsuperscript{79} There is a misconception that deforestation is progress, and many developing counties push for deforestation with policies that require citizens to clear land to claim ownership.\textsuperscript{80}

Some simply regard the loss of forests as a small price to pay for economic development.\textsuperscript{81} Essentially, state-owned forests have turned into a tragedy of the commons, with “[t]he fate of the tropical rainforest . . . as one of the largest examples—perhaps surpassed only by the world’s oceans.”\textsuperscript{82} It is difficult to persuade persons in impoverished areas, who may be occupying forest areas illegally, not to cut down trees, especially when those persons rely on subsistence agriculture, and logging companies will pay wages to cut and haul high-valued tropical hardwood trees.\textsuperscript{83} The rural poverty that contributes to illegal logging and deforestation will need to be addressed as a part of this “land tenure problem”; any “long-term solutions to deforestation and illegal logging will require . . . economic development to provide jobs” for local people that do not involve cutting down local forests.\textsuperscript{84} People who illegally occupy forests should be dealt with through policies that encourage jobs and legal development, not criminalization, to build for a sustainable future.\textsuperscript{85}

The weak oversight of logging companies by local

\textsuperscript{79}. Id.
\textsuperscript{80}. TRACER, THE ROUGH GUIDE TO TRACEABLE CERTIFIED FOREST PRODUCTS 18 (3d ed. 2011).
\textsuperscript{81}. WORLD BANK, supra note 51, at 13; DOUGLAS & SIMULA, supra note 1, at 22. An annual forest loss of “a quarter or even a half of one percent” would be regarded as mattering “relatively little . . . in the larger task of economic development.” DOUGLAS & SIMULA, supra note 1, at 24.
\textsuperscript{82}. DOUGLAS & SIMULA, supra note 1, at 83.
\textsuperscript{83}. CUT & RUN, supra note 56, at 8. Even though “forest dwellers are only too aware of the long-term consequences of such cutting,” they participate because they “have no other way to support their families.” Id.
\textsuperscript{84}. SENeca CREEK, supra note 44, at 59; CUT & RUN, supra note 56, at 8–9 (“Only when rural families have alternatives that allow them to live in dignity can the temptation to cut and sell . . . be at least partially overcome.”).
\textsuperscript{85}. WORLD BANK, supra note 51, at 13.
governments is not helped by the lack of “international and national frameworks” regulating the operations of these companies.\textsuperscript{86} Globalized, vertically integrated large companies can easily move to different countries to take advantage of higher profits and lower costs.\textsuperscript{87} In a situation with hands-off governments and “unclear” trade practices, it is not difficult to imagine these companies taking advantage of the situation for quick profits.\textsuperscript{88}

Finally, one of the difficulties in dealing with the illegal logging trade is that timber is regularly traded internationally, and “the legality of any particular shipment of timber is based on paperwork” that can be forged or purchased through bribery.\textsuperscript{89} Furniture, for instance, has a “complicated supply chain, with offshore manufacturers often using wood imported from a third country or countries, mak[ing] documentation . . . difficult.”\textsuperscript{90} In 2009, $2.6 billion in illegally sourced wood-based products went to the European Union from China and Southeast Asia, while China imported illegal timber worth $870 million.\textsuperscript{91} Because legal timber looks like illegal timber, it is a simple matter to insert illegal timber into the legal supply chain.\textsuperscript{92} It is relatively easy to hide the nature and origin of the wood by forging papers, and without correct papers legal wood is indistinguishable from illegal wood, and so the illegal logging trade is free to continue responding to increased demand for hardwoods without getting caught.\textsuperscript{93}

Once illegal wood enters the supply chain, it can be impossible to determine legitimacy, and companies can easily “claim ignorance as to the ultimate origin” if anyone questions

\textsuperscript{86} C\textit{ut & Run}, supra note 56, at 7. \\
\textsuperscript{87} \textit{Id.} \\
\textsuperscript{88} \textit{Id.} \\
\textsuperscript{90} Powell Slaughter, \textit{Lacey Act Looms: Lacey Act Regulations on Illegal Wood Have Teeth}, HOME FURNISHING BUS., Dec. 2009, at 36. \\
\textsuperscript{91} U.N. Office on Drugs and Crime, supra note 89, at 10. \\
\textsuperscript{92} \textit{Seneca Creek}, supra note 44, at ES–3 (noting that illegal timber is “relatively easy to merge into legitimate distribution”). \\
\textsuperscript{93} U.N. Office on Drugs and Crime, supra note 89, at 166.
the legality of the timber source. Because timber is a product that can be bought and sold legally in the open market, buyers typically take the timber source on good faith or do not care. This makes buyers targets of unscrupulous companies that can take advantage of buyer complacency.

D. The Impact of Illegal Logging on U.S. Industry

Illegal logging, besides hurting the environment and contributing to corruption and organized crime, is also hurtful to the legitimate logging industry. Illegal wood is estimated to depress world prices by anywhere from seven to sixteen percent on average, and prices in the United States are estimated to be depressed by two to four percent. Illegal logging hurts legitimate U.S. manufacturers because they have to “compete against imported, illegally harvested low-priced wood and wood products.” Illegal logging also hurts the U.S. unemployment statistics; illegal logging is estimated to have contributed to the “logging, wood, paper and cabinetry industries [losing] 242,000 jobs, or roughly 23 percent of its workforce, since 2006.”

A 2004 industry report estimated that eliminating illegal logging would have created, during the period from 2003 to 2012, $275 million in yearly “export opportunities for U.S. producers of sawnwood and panels” and brought the average

94. Id. at 278.
95. Id.
96. See SENECA CREEK, supra note 44, at 139 (“[T]he most common theme among Chinese companies [interviewed about illegal logging] was that, even if there were problems, the customers simply didn’t seem to care . . . . If the foreign countries permitted the trade, and if the customers didn’t care, the Chinese companies did not understand the problem.”).
97. Id. at ES–1.
98. Id. at ES–2. “Cost comparison between illegal and legal material is complex,” because companies may be paying lower prices for the logs themselves and can avoid taxes and labor laws, but may have to pay more in bribes and risks. Id. at ES-4. Additionally, there is a wide range in prices for tropical hardwood logs, and “if illegal mills focus on higher value logs, their average log cost might be higher than legal mills consuming lower value logs.” Id.
100. Id. (citing U.S. Bureau of Labor Statistics).
annual value of industrial roundwood exports up to $186 million. The sum total of this projected value in exports is about $460 million. These numbers represent the lost “opportunity costs for U.S. exporters” due to illegal logging.

Several wood products companies backed the 2008 Lacy Act Amendments on the grounds that the Amendments would help keep lower-priced illegally harvested wood from flooding out the market, while unions and nonprofit groups backed the Amendments to protect U.S. jobs and the environment. The wood-products industry hopes that the 2008 Amendments mean that “more U.S. manufacturers using wood will seek to ensure they are buying from legal sources, helping domestic wood producers.”

E. Past International Efforts to Combat Illegal Logging

The Lacey Act is unique in its scope as the first ban on illegal logging in the world. However, it is neither the first nor the only attempt made to combat illegal logging. One earlier attempt by the United States was at the national level; called The President’s Initiative Against Illegal Logging (“PIAIL”), the program was launched under President Bush in July of 2003. PAIL “committ[ed] the U[nted] S[tates] to assisting developing countries in their efforts to combat illegal logging, including the sale and export of illegally harvested timber, and in fighting corruption in the forest sector.” The

101. Seneca Creek, supra note 44, at 26. The estimated values “are based on the assumption in the model that the effect of stopping illegal logging [would] lead to a reduction in supply by 2012 that is less than the reduction in illegal logging.” Id. Additionally, the “actual ability of U.S. wood producers to capture additional global market share in the absence of suspiciously produced material will be a function of many factors including the substitutability of U.S. species in particular markets or for particular end uses.” Id. at 27.
102. Id. at 26.
103. Id.
105. Id.
106. Combs, supra note 43.
107. Id.
108. Seneca Creek, supra note 44, at 31.
109. Id.
areas that PIAIL targeted were “the Congo Basin, the Amazon Basin and Central America and South and Southeast Asia.”

The only enforceable international multilateral effort that has touched on illegal logging is the Convention on the International Trade in Endangered Species (CITES); the “enforcement provisions [are] for limit[ed] trade in certain plant and animal products.” Each country who is a party to CITES has agreed to CITES’s limitations and restrictions on trading of the listed plant and animal species, and has “a designated CITES management authority” in charge of permits and trade regulation. Under CITES, some species of wood are completely banned from global trade, while others are allowed to be traded with “either an export permit if originating in the country where it is listed, or a certificate of origin if from another country.”

Another international effort is the Forest Law Enforcement and Governance (FLEG) Initiatives, which are cooperative in nature and are funded by the World Bank. In 2001, the first Initiative was held in East Asia, and since then, FLEG Initiatives have been created in Europe and Africa. So far, FLEG Initiatives have focused getting bilateral, regional, and multilateral agreements between “timber producing and consuming countries...to intensify national efforts [and] strengthen...collaboration to address violations of forest law and forest crime and in particular illegal logging and associated trade.” The European Union’s FLEG has a trade element to it (FLEGT) that utilizes an export licensing system implemented by voluntary “bilateral agreements with supplier countries” that

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110. Id.
111. Id. at 29.
112. Id.
113. Id.
115. Seneca Creek, supra note 44, at 30, 34.
116. Id. at 29–30.
117. Id.
would ensure that wood exported to the European Union is legal. FLEGT “also encourages the development of public procurement policies, measures to prevent investment in activities that encourage illegal logging, encouragement for private sector initiatives to source only legal timber, and commitments to address conflict timber problems.”

A bilateral plan like FLEGT for the United States has “several possible implications.” FLEGT could create “more opportunities for U.S. exports in Europe” as imports from developing countries fall off due to the licensing requirement. If timber that previously would have gone to Europe now goes to Asia, U.S. exporters would have even more competition in those markets. Moreover, “it might be difficult to license only product[s] destined for Europe from partner countries and European firms may seek to have all timber licensed from the exporting country in order to spread the costs . . . [that] would [help] U.S. exporters, but harm U.S. importers.”

The plans outlined above are by no means exhaustive of the initiatives taken against illegal logging. It is worth noting that plans such as the FLEG initiatives are completely voluntary in nature, as opposed to the Lacey Act, which is a complete ban on illegal logging enforced with criminal and civil penalties.

IV. ANALYSIS

A. The Need for a De Minimis Exception

Labeling requirements have often been supported as a means of combating illegal trade. The Lacey Act’s mandatory

118. Id. at 30.
119. Id.
120. Id.
121. Id.
122. Id.
123. Id.
124. See id. at 29–31 (detailing a list of initiatives against illegal logging).
125. DOUGLAS & SIMULA, supra note 1, at 73.
126. Combs, supra note 43.
127. ROYAL INSTITUTE, supra note 16, at 20 (“Any system to control trade in illegal
labeling requirement for all imports is a noteworthy change for an industry that has previously only dealt with labeling requirements of a voluntary nature.\textsuperscript{128} The labeling requirement will potentially have a large impact on American businesses, affecting everything from the printing industry,\textsuperscript{129} home furnishings,\textsuperscript{130} and small-time music instrument dealers.\textsuperscript{131} The requirement means that companies will have to do much more in-depth record-keeping on imported products, which can be especially difficult when products are composed of “different species from different forests” from different countries.\textsuperscript{132}

After the raid on Gibson Guitar, people who believed they could potentially be affected by the Lacey Act started paying more attention to its requirements. Owners of antique musical instruments, which are often made with woods such as ebony and rosewood, were being warned to not bring their instruments outside of the United States when traveling.\textsuperscript{133} This is because upon return to the United States, the labeling requirements would require travelers to identify the species and country of origin, a troublesome matter for antique instruments with components of uncertain provenance.\textsuperscript{134}

Yet these fears may prove to be unfounded. Going after antiques would hardly be within the intent of the Lacey Act Amendments.\textsuperscript{135} The Animal and Plant Health Inspection Service (APHIS) has attempted to provide a workaround for

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\textsuperscript{128} 16 U.S.C. § 3372(f) (Supp. II 2008); Slaughter, supra note 90, at 36–37.

\textsuperscript{129} Jones, supra note 31, at 46–47.

\textsuperscript{130} Slaughter, supra note 90, at 36–37.

\textsuperscript{131} Upfront: Mounting Concern Regarding The Lacey Act, MUSICAL MERCHANDISE REVIEW, June 2011, at 8 [hereinafter Upfront]; Guitar Frets, supra note 46.

\textsuperscript{132} Slaughter, supra note 90, at 36–37 (describing challenges to the furniture industry, which usually has a “complicated supply chain”).

\textsuperscript{133} Havighurst, supra note 9.

\textsuperscript{134} Guitar Frets, supra note 46; Havighurst, supra note 9 (quoting George Gruhn, “one of the world’s top dealers” in antique instruments, “[The Lacey Act is] ‘a nightmare. . . . I can’t help it if they used Brazilian rosewood on almost every guitar made prior to 1970. I’m not contributing to cutting down Brazilian rosewood today.’”).

\textsuperscript{135} See Havighurst, supra note 9 (“[E]verybody understands that the intent here is to reduce illegal logging . . . .”).
items that contain reused plant materials or were made prior to the 2008 Amendments by allowing importers to declare that a product “was manufactured prior to May 22, 2008, and that in the exercise of due care the genus, species, and/or country of harvest is unknown.”136 Importers utilizing this workaround must still provide “all known or reasonably knowable genus, species, and country of harvest information” and “certify that the declaration is correct to the best of his or her knowledge.”137

As APHIS attempts to formulate regulations for the new Lacey Act provisions, there are several proposals in the works that should ease the minds of those who think the Justice Department will come knocking on their door.138 One of these is a de minimis exception for items containing minimal amounts of plant material.139 A de minimis exception would make the declaration requirements less burdensome for businesses that ship items with small amounts of plant material.140

Supporting a de minimis exception would not violate the intent of the Lacey Act, as targeting items that contain “minimal amounts of non-listed (i.e., not of conservation concern) plant materials contained in an otherwise non-plant product, such as wooden buttons on a shirt” does little to advance its conservation goals.141 The United States also only has a finite


137. Id.

138. See Havighurst, supra note 9 (noting “that the government has tried to create exemptions to cover vintage instruments”).

139. See Lacey Act FAQ, supra note 13, Question 9 (explaining that there is currently no de minimis exception to the Lacey Act, but the relevant amount of an item may be a factor in enforcement). The term “de minimis” is shorthand for “de minimis non curat lex,” or the principle that “the law does not concern itself with trifles.” Black’s Law Dictionary 496 (9th ed. 2009).

140. See Upfront, supra note 131, at 8 (“[E]xport[ing] a $5 set of pearl dots for guitar fingerboard inlays requires over $200 in permits and formal export documentation.”).

141. Implementation June 2011, supra note 136, at 38330–31 (describing the declaration requirements as not ideal for shipments containing minimal amounts of non-listed plant materials). The “listing” refers to items on CITES. Id. at 38331; CITES, supra note 22, at apps. I, II, III. In a case “[w]here a very small amount of product is found to be in a shipment but not in a declaration, it may indicate a circumstance in
amount of resources available that will be dedicated to enforcing the Lacey Act, and going after items that contain miniscule amounts of plant material is hardly an efficient use those resources. Recognizing this, APHIS is currently “considering the feasibility of defining a de minimis exception for products containing minimal amounts of plant material.” A potential de minimis exception would likely be based on a percentage threshold of plant volume, weight, or value, or a combination thereof.

Support for a de minimis exception is very strong. The National Association of Music Merchants stated in their submission to APHIS that implementing such an exception would greatly assist producers and importers because they could then structure their business decisions to plan for compliance. Moreover, as the exception would not include species ‘of conservation concern,’ it would not undermine the overarching conservation goals of the Lacey Act.”

The Association of Global Automakers, Inc., wrote in their submission that “massive [very costly] changes to our supply chain practices and our automation systems would be required” to comply with the declaration requirement, as many motor vehicle parts contain which the declaration was not knowingly false, and thus [there would be no] criminal violation.” Lacey Act FAQ, supra note 13, Question 9.


143. Implementation June 2011, supra note 136, at 38331.

144. Id. APHIS is also considering an approach where an item could be defined as made of “composite plant materials” and importers would have to identify the point of origin and declare any plant material over a given percentage in the item or declare the average percent composite plant material without naming the species, genus, and country of origin. Id.


146. Id.
small amounts of plant materials.\textsuperscript{147}

Even trading partners of the United States who are concerned about the impact of the Lacey Act have written to APHIS in support of a \textit{de minimis} exemption. Sweden, in its public comment, addressed recycled material as a concern, stating that that APHIS should “make permanent current practice to allow declarations of products made before May 22, 2008 to state... the genus, species and/or country of harvest is unknown [if] due care has been exercised.”\textsuperscript{148} Sweden also believes that importers should be able to put “unknown” down for recycled materials so that importers’ use of recycled materials is not disincentivized.\textsuperscript{149} The Japanese government submitted a comment requesting that pulp and paper products be excluded altogether from the declaration requirement.\textsuperscript{150}

\begin{footnotesize}
\begin{enumerate}
\item[147.] Letter from Paul D. Ryan, Dir. of Pub. Affairs, Ass’n of Global Automakers, to Regulatory Analysis and Dev., APHIS (Aug. 25, 2011), available at http://www.globalautomakers.org/media/agency-comments/comments-regarding-implementation-of-revised-lacey-act-provisions (responding to the request for public comment on the proposed Lacey Act import declaration requirement in a letter entitled “Comments Regarding Implementation of Revised Lacey Act Provisions”). An antithetical point of view presented by the United Steelworkers Union (USW) is that APHIS should not make a blanket \textit{de minimis} exception for plants made from composite plant materials because it is contrary to the administrations country’s carbon limiting policy and “paper and board is a substantial majority of wood-based trade the Lacey Act amendments were designed to regulate.” Letter from Holly R. Hart, Assistant to the President, Legislative Dir., United Steelworkers, to Regulatory Analysis and Dev., APHIS (Aug. 29, 2011), available at http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0129-0036 (responding to the request for public comment on the proposed Lacey Act import declaration requirements in a letter entitled “RIN 0579-AD44-Implementation of Revised Lacey Act Provisions”). Additionally, USW contends that the identification for paper is not “prohibitively expensive” since private entities like the Rainforest Action Network have been able to analyze paper to get this information, and a public entity such as APHIS should be able to as well. \textit{IId}.


\item[149.] \textit{Id}.


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Even with a *de minimis* exception, Japan argues, “relevant Japanese industries would not be able to adapt to the declaration requirements in certain cases due to high mixing rates of those products . . . [and] the declaration requirements will discourage industry from using recycled materials.”

Canada also expressed similar concerns regarding the paper industry and recycled products, and wrote in support of a *de minimis* threshold that is “industry-specific.”

With strong public support and a seemingly favorable outlook by APHIS, a *de minimis* exception in the regulations for the Lacey Act should exist. Should a *de minimis* exception come into existence, companies might start breathing easier, but this and other tweaks to the Lacey Act alone are not a solution to the dilemma the Lacy Act presents.

**B. The Future of Compliance**

The debate over the need of a *de minimis* exception, including how to define the exception, is relatively straightforward. Relevant industries and American trading partners have no problem with an exception. More important is the concern over the consequences that will result when other countries begin enacting their own versions of a Lacey Act ban on illegal logging—will one country have a ten percent *de minimis* exception and another allow only two percent?

151. *Id.*


153. *See supra* Part VI.A. (discussing the need and the strong support for a *de minimis* exception).

154. *See supra* Part VI.A. (discussing that several organizations, like the NAMM and the Association of Global Automakers, Inc., and U.S. trading partners, like Sweden, Japan, and Canada, support a *de minimis* exception).

155. *See Implementation June 2011, supra* note 136, at 38331 (discussing the consideration of a *de minimis* exception to the U.S. Lacey Act and the several potential systems for measuring what “*de minimis*” would be under the Lacey Act regulations). One of the more complex approaches would be to “define the term ‘composite plant materials’ and then formally recognize a *de minimis* exception from the declaration requirement for products containing such materials.” *Id.*
Though this situation is hypothetical, it could soon become the new reality for companies trying to engage in legal trade in wood and wood products.

Though the United States was the first country to pass a law as stringent as the 2008 Lacey Act Amendments, other countries have passed laws on a smaller scale. Australia is considering passing a similar law to prevent the importation of illegally acquired timber. Like the Lacey Act, these new laws being considered will require companies to not only record documentation of the wood’s source to ensure their legality, but also be able to prove that they have been documenting the source of the wood to avoid prosecution.

Quite problematic, however, is that even though laws like the Lacey Act will definitely push for the end of illegal practices among suppliers, “regulations [will not be] identical and will be applied in parallel which may pose problems to exporters.” The current U.S. approach under the Lacey Act is unilateral in...
nature, and multiple unilateral approaches would create a problematic situation with “several bodies... applying their own standards or broad definitions of legality.”

A simpler solution would be for there to be one single international standard, which would both be easier to implement and easier for companies to follow.

Some suggest that “legality assurance through national systems rather than relying on private sector service providers” is a good way to go about improving national trade, supporting private industry, and promoting transparency about the legality of timber products. However, governmental oversight on a national level needs to go further. Instead of a system of different Lacey Acts for each individual nation, it would be far better to have one international system in place that bans illegal logging and provides for a global system of compliance.

The second problem with acts such as the Lacey Act is that they only attack the demand-side of the equation and the end of the supply chain. Any sort of multinational agreement for a ban on illegal logging should strive to attack both sides of the supply chain; moreover, “trade measures are only a complementary element in solving the governance problems in exporting countries.”

Different declaration requirements are not enough to stop illegal logging. As Canada pointed out in its submission letter to APHIS, reporting requirements do little to combat illegal logging for countries that have “effective enforcement of forest legislation [which already] assures the

160. Id. at 74–75.
161. See id. at 75 (“[A multilateral solution] would facilitate implementation by companies which supply different international markets and not put exporters into different categories depending on whether their country is participating in a bilateral arrangement or not.”).
162. Id. at 74.
163. See id. at 75 (“[T]here will need to be a multilateral solution to the problem of trade regulation, rather than relying on unilateral importing country measures like the Lacey Act or bilateral arrangements like the EU voluntary partnership agreements.”).
164. Id. at 76.
165. See CANADA’S COMMENTS ON THE REVISED LACEY ACT PROVISIONS, supra note 152 (“[R]eporting information on genus and species on the important declaration for composite wood products that originate in Canada does not further the objective of combating illegal logging.”).
legality of forest products originating from [that country].”

Trade measures can be overly blunt instruments, and it is crucial to understand the local issues involved to avoid alienation of governments in supplier countries. The real issue that must be tackled to stop illegal logging is on the supply-side of the equation—the corruption, poverty, and poor enforcement of laws in the countries that source illegal wood.

C. An International Agreement to Address Illegal Logging

The United States may be the largest consumer of wood in the world, but it is still one consumer of many, and stopping illegal timber from entering the United States is only one step towards combating illegal logging. An international treaty addressing these concerns would be more effective than a patchwork of “Lacey Acts” enacted by various countries, and would also be more effective at attacking problems in supplier countries.

To eradicate illegal logging, a solution must start with the countries supplying the wood. However, for these countries, illegal logging is but one of a myriad of symptoms that these

166. Id.

167. D OUGLAS & S IMULA, supra note 1, at 202. For example, “in some cases, the new crop or other land use may have been the primary instrument of deforestation; in others, it may simply have been the last step in a long process with complicated social, cultural and political origins.” Id. A one-size-fits-all solution created from the outside aimed at solving local issues that create deforestation would not work, and in any case, cooperation of both the supplier and demand countries would be needed in order to make any solution truly viable. See id.

168. See id. at 76 (noting that “strengthening of governance” will require a “high level [of] political commitment to the linkage of larger economic and social developments to forest outcomes”); W ORLD B ANK, supra note 51, at xiii (“Strengthen[ing] supply-side measures . . . is especially important in countries where export demand is a significant driver of illegal activities in the forest sector.”).

169. E IA, supra note 7.

170. See id. (explaining that although the Lacey Act is a landmark step in changing the “unregulated global timber industry,” it is not the end of the story and that the act could empower other communities “around the world in their efforts to combat illegal logging”).

171. See W ORLD B ANK, supra note 51, at 21–22 (“The development of transnational cooperation is an increasingly common response to transnational organized crime.”).
countries face, and the overarching problem is corruption. The organized crime that profits from illegal logging is a vicious cycle. Organized crime feeds off corruption, which weakens governments, and makes corruption more widespread and organized crime more entrenched. Moreover, “[i]llegal logging and illegal timber trade are often interwoven with other illegal practices,” which makes it more difficult to isolate and weed out illegal logging. Further compounding this is that a country’s entire economy is likely to suffer in the process of getting rid of corruption in the forest sector because “strengthening governance is usually a long tedious process . . . [that] will need to be underpinned by high level political commitment to the linkage of larger economic and social developments to forest outcomes.”

This is not to say that trade measures like the Lacey Act are useless. Bans on the importation of illegally cut wood would be very important to an international agreement, as these bans create disincentives for illegal timber while creating incentives for legal timber. The Lacey Act is a big step forward in this respect because it forces transnational corporations to be accountable for the legality of their supply chains. However, it is important to not forget to attack the root of the problem as well.

The international agreement should contain rewards for

172. See Cut & Run, supra note 56, at 11–12 (explaining that factors such as undue political influence, poor government policies, and poor enforcement systems can encourage illegality and that, “[i]n some countries at least, corruption seems to be a fundamental element of the system”); see also INECE, supra note 6, at 9 (stating that producer countries, despite the Lacey Act, will still need to crack down on compliance with their own laws to ensure proper enforcement and allow for “sustainable development and protection of ecosystem assets.”)

173. U.N. Office on Drugs and Crime, supra note 89, at 13–14. Transnational organized crime “can present a major challenge even where the state is strong, but when, for a variety of reasons, the rule of law is already weakened, it can pose a genuine threat to stability.” Id.

174. Id.

175. Cut & Run, supra note 56, at 93.

176. Douglas & Simula, supra note 1, at 76.

177. Id.

developing companies who take real steps to stamp out illegal logging. These “mechanisms [would] compensate developing countries that adopt sustainable models of development” since countries who adopt sustainable models would have to compete alongside countries that refuse to reform.179 To participate in an international agreement, a developing country would have to both implement and enforce stronger environmental laws.180 International assistance in this effort is very important in this process; even though “[l]ocal efforts are key[,] . . . [they] will only serve to displace the flow [of goods and services] until a coordinated effort is adopted.”181 Another means of enforcing anti-illegal logging measures would be to include in the treaty a provision limiting market access to participating countries, who will need to be complying with all “national forest-related laws and international treaties to which a country is a signatory . . . .”182

Another issue that this agreement should address is the rural poverty that leads to violation of forest laws.183 Most of current forest law centers on enforcement itself and not making sure laws are aimed at getting a correct result.184 The Lacey Act’s focus on enforcement is not appropriate for a developing country with laws that need serious revision to both protect forests and local citizenry.185 Transparency is key to this

179. CUT & RUN, supra note 56, at 95.
180. See U.N. OFFICE ON DRUGS AND CRIME, supra note 89, at 18 (stating that organized crime has grown in unregulated areas).
181. Id.
182. CUT & RUN, supra note 56, at 96.
183. WORLD BANK, supra note 51, at 6 (“[T]he efforts to combat poverty-driven forest crime should focus on closing the huge gap between legal supply and demand . . . that exists in many countries . . . .”).
184. Id. at 6–7.
185. CUT & RUN, supra note 56, at 99 (explaining that governments should make critical assessments of forestry and other policies and laws and determine whether to simplify existing legislation or add new legislation). One of the ironies of the Lacey Act is that the United States is effectively enforcing poorly written and easily circumvented laws to stop illegal logging. Cf. Brian Walsh & Tiffany M. Joslyn, Without Intent How Congress is Eroding the Criminal Internet Requirement in Federal Law, THE HERITAGE FOUNDATION, 9–10 (2010), http://www.nacdl.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=17613 (noting that poor drafting results in difficulty in determining whether a mens rea requirement applies to each element of the criminal offense). However, the
In areas where the indigenous people own the land, local communities can be “lure[d]...into signing concessions...[with] seductive promises, which are seldom fulfilled and which in no way compensate for the havoc and dependency that the logging operations create.” National and local leadership often partner with the logging companies to the detriment of the community as a whole; transparency will help local communities know their rights and be less likely to be taken advantage of by logging companies.

Forcing companies to perform their due diligence in order for them to prove their wood’s origin is central to encouraging transparency. The declaration form in the Lacey Act is not just important for figuring out the species and origin of wood product imports—it also makes the declarant responsible for their suppliers. There is no “innocent owner” exception in the Lacey Act, and sellers who do not check information are held liable. The United States does not plan to create a database of foreign laws that an importer will need to check, meaning the onus is on importers to know foreign laws relating to their shipments and to do their fact-checking. This process is meant to help legitimate companies since illegal practices “create unfair competitive advantages and undermine the resource base for the entire industry.” Companies who complain about the costs of compliance should also keep in mind United States is enforcing these laws against companies that are benefiting from violating foreign law. Local populations, then, are not the true target.

186. World Bank, supra note 51, at 6 (“[T]ransparency is critical...[for] both broad dissemination of the laws and ensuring that the language is understandable to the public.”).

187. Cut & Run, supra note 56, at 12.

188. Id.

189. Royal Institute, supra note 16, at 48 (“Central to encouraging greater transparency over company operations and greater due diligence in investments is a strong disclosure regime.”).

190. 16 U.S.C. § 3372(f) (Supp. II 2008); Sample Form, supra note 30; Forestry Law Splits Wood Industry, supra note 14 (explaining that gathering information from suppliers could be difficult because of supplier fears of losing business).

191. Lacey Act FAQ, supra note 13, Question 32; Forestry Law Splits Wood Industry, supra note 14.

192. Lacey Act FAQ, supra note 13, Question 8.

193. Cut & Run, supra note 56, at 96.
that unscrupulous companies “tarnish the reputation of the entire industry.”

The above discussed policies would all be ideally carried out in an international treaty or agreement rather than several separate unilateral or bilateral actions. They are certainly not exhaustive of the policies that should be put into place, but merely a starting point for the larger discussion in the international community that needs to be taking place following the passage of the 2008 Amendments to the Lacey Act.

V. CONCLUSION

The Gibson Guitar raids have brought increased attention to the issue of illegal logging and the methods of controlling it. By banning illegally acquired wood products from entering the country, the United States has made a big commitment to the fight against organized crime and corruption by countries and timber suppliers. Importers will need to monitor the coming APHIS regulations for implementation of the Lacey Act Amendments. As evidenced by Gibson Guitar, importers should not be waiting around to comply with the Lacey Act since “most of the statute is self-implementing and thus may be enforced prior to the issuance of any implementing regulations.”

Meanwhile, eyes should be on the still-ongoing saga between Gibson Guitar and the Department of Justice to see the outcome of what is setting up to potentially be the first high-profile case prosecuted under the revised Lacey Act. The concerns

194. Id.; Forestry Law Splits Wood Industry, supra note 14 (noting also that the Lacey Act specifically helps domestic wood producers because manufacturers will “ensure they are buying from legal sources”).

195. DOUGLAS & SIMULA, supra note 1, at 75.

196. The Lacey Act has even inspired its own song, though admittedly its focus is on the plight of Gibson Guitar rather than on the Lacey Act itself. Steve Bryant, Keep Your Hands Off Our Wood—For Gibson Guitars, YOUTUBE (Sept. 8, 2011), http://www.youtube.com/watch?v=_XBf7rTtnPM.

197. Lacey Act FAQ, supra note 13, Questions 1, 4.

198. Id., Question 4.

199. Gibson/Lacey Act Update, HOME FURNISHING BUS. (July 6, 2011), http://www.hfbusiness.com/article/doj-says-gibson-lacks-legal-standing-claim-ownership-ebony#. After the first raid, Gibson filed a civil lawsuit to recover the wood seized. Id.
mentioned in previous sections of this Comment about musical instruments potentially violating the Lacey Act have inspired another bill, this time to amend the Lacey Act again to protect instrument manufacturers, dealers, and musicians. An amendment of this sort would arguably be redundant, especially considering that several of APHIS’s proposed regulations outlined for composite wood, dated products, and “de minimis” products address the concerns that amendment proponents have and the regulations are likely to be passed by APHIS in the coming months.

The Lacey Act will surely serve as a model for other developed countries looking to help stop illegal logging and who are considering bans. While similar bans by other countries are an improvement over participation in voluntary schemes (or nothing at all), these responses do not represent the best

The Justice Department is claiming that Gibson does not have standing to claim ownership over the wood because it is contraband, or “inherently illegal to possess, ‘both because it was unfinished wood and because Claimants’ source for ebony in Madagascar was not authorized to sell it.” "Id.; Endangered Species Trafficking: What Did Gibson Guitar Know?, MONGABAY (July 7, 2011), http://news.mongabay.com/2011/0706-ebony_gibson.html#.Ob7hmFjZc22Om8cv.99. Gibson Guitar and the Justice Department came to an agreement in August 2012 in which no criminal charges were filed and Gibson paid a $300,000 fine and gave $50,000 to the National Fish and Wildlife Foundation to “promote conservation of tree species used in the musical-instrument industry, implement a compliance program and withdraw its claims to the Madagascar ebony seized.” Kris Maher, Gibson Guitar to Pay Fine Over Wood Imports, WALL ST. J. (Aug. 7, 2012), http://online.wsj.com/article/SB10000872396390443792604577573010767171448.html.

200. Juliet Eilperin, Gibson Guitar Ignites Debate Over Environmental Protections, WASH. POST (Nov. 13, 2011), http://www.washingtonpost.com/national/healthscience/gibson-guitar-ignites-debate-over-environmental-protections/2011/11/11/gIQAACDdIN_print.html. This amendment is sponsored by Gibson’s CEO, and has been broadened to affect other industries in order to increase support for the bill in Congress. Id. For example, “[i]t would remove requirements for retailers and manufacturers bringing in non-solid wood products—such as pulp and paper—to identify their source, as well as prevent the confiscation of illegally logged wood from someone who did not knowingly possess it.” Id. Of course, removing the declaration requirement and the forfeiture section of the statute would vastly weaken both the implementation and the enforcement of the 2008 Lacey Act Amendment and completely undermine the purpose and intent of the 2008 Amendments of the Lacey Act.

201. See Implementation June 2011, supra note 136, at 38330–31 (considering the feasibility of various de minimis exceptions).

202. SENECA CREEK, supra note 44, at 30, 34.
possible outcome for participants in the legal logging industry and exporting countries suffering from the deleterious effects of illegal logging.

To protect both the legal logging industry and the world’s forests, an international agreement is needed that attacks illegal logging on all fronts, allows companies to operate efficiently in the global market, and stops the effects of organized crime and corruption.203 While there is no “silver bullet” approach that will magically stop all illegal logging, and effecting true change will not be easy, it is time for the international community to step up and deal with illegal logging head on.204

203. DOUGLAS & SIMULA, supra note 1, at 206.
204. Id.