THE LACEY ACT:

Lessons Learned From A Decade of Enforcement
Enacted 2008

Illegal to
import, export, transport, sell, receive, acquire or purchase
any plant/plant product
taken, possessed, transported or sold
in violation of underlying U.S. or foreign law

Make or submit
any false record, account or label for, or any false identification of
any plant/plant product
which has been or is intended to be
transported in interstate or foreign commerce or
imported, exported, transported, sold, purchase, or received from any foreign country
**Trafficking**
Doing just about anything with plants & trees when the resource is somehow illegal under a state, federal, or international resource-focused law.

*False Labeling*
“A border and a lie”
Enforcement Challenges

- Staffing/Resources
- Expertise
- Proving Scienter
- Forensics
- Corruption
- Declaration Implementation Schedule
Enforcement

- Forfeiture
  - Strict Liability

- Civil/Administrative
  - Due care trafficking
  - Knowing false labeling

- Criminal
  - Knowing Felony
  - Due Care Misdemeanor
Forfeitures

Forfeiture investigations of timber from Peru
Resulted in denial of entry at the Port of Houston of multiple shipments

Out-of-court settlements whereby the importer voluntarily
• destroyed the illegal timber at its own cost and
• reimbursed the government for the costs of storing the timber
USTR Announces Unprecedented Action to Block Illegal Timber Imports from Peru

Washington, DC – United States Trade Representative Robert Lighthizer today directed the United States Customs and Border Protection (CBP) to block future timber imports from a Peruvian exporter based on illegally harvested timber found in its supply chain. This enforcement action is being taken by the Interagency Committee on Trade in Timber Products from Peru (Timber Committee) for the first time under the United States – Peru Trade Promotion Agreement’s (PTPA) Annex on Forest Sector Governance (Forest Annex).
Civil Fines
Criminal

- Gibson Guitars
- Lumber Liquidators
- Young Living Essential Oils
"After years maintaining innocence," as Nashville Public Radio says, Gibson Guitar Corp. has agreed to pay a $300,000 penalty, donate $50,000 to a conservation fund and give up its claims to ebony and rosewood worth nearly $262,000 to avoid being criminally prosecuted for importing exotic woods.

NPR's Carrie Johnson tells our Newsset Desk that "it's a crime to bring endangered plants and wood into the U.S. if the materials are protected under the laws of other countries. Under the terms of a deal announced today by the Justice Department, Gibson also promises to beef up its compliance programs."

The Justice Department's moves against Gibson in 2011, which included a raid on the company's factory and seizure of some ebony and rosewood, turned the guitar company into "the poster child for the Republican Party's campaign against burdensome regulations," as The Hill has written. Gibson hired lobbyists to make its case on Capitol Hill.
Outcome
Criminal Enforcement Agreement

• Agreed statement of facts
• No criminal charges filed
  • Government retained the right to file charges if agreement breached
• 18 month-period of oversight
  • No additional violations
  • Cooperation with continuing and subsequent investigations
• $300,000 monetary penalty
• $50,000 community service payment
• Forfeiture of wood seized during investigation
• Compliance program for wood procurement
Felony conspiracy – entry of good by means of false statements – without reasonable cause to believe the truth of those statements

Lacey due care misdemeanors
Outcome
Criminal Plea Agreement

- One felony violation, four misdemeanor violations
  - First felony conviction under Lacey Act timber amendments
- Largest Lacey Act criminal financial penalty ever
  - $7.8 million criminal fine
  - $1.2 million community service payments
  - $4.5 million in forfeiture
- Detailed factual statement
- Environmental Compliance Plan
  - Annual auditing and reporting to the court
- 5 years probation
Young Living Essential Oils pleaded guilty in federal court Monday to the illegal trafficking of oils from endangered plants. The company is ordered to $760,000 in fines.

According to the plea agreement, from June 2010 to October 2014, several company employees and contractors harvested, transported, and distilled rosewood (*Aniba roseaodora* or Brazilian rosewood) in Peru and imported some of the resulting oil into the United States, through Ecuador. Neither the company nor its suppliers, employees, or agents had any valid authorization from the Peruvian government.

The investigation, conducted by several agencies, revealed many other violations. Click here for a full list.
Enforcement Progress

- Staffing/Resources
- Expertise
- Proving Scienter
- Forensics
- Corruption
- Declaration Implementation Schedule
Lacey Act and EUTR

Prohibitive (but for declaration)
Burden on Government
Criminal/Civil/Administrative

Proscriptive
Burden on Importer
Regulatory/Administrative

Violations of the EUTR can be the underlying law violation for a Lacey Act charge
THANK YOU

Elinor Colbourn
Senior Counsel for Wildlife Programs
elinor.colbourn@usdoj.gov
001-202-305-0205