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Raid demonstrates federal government's seriousness in fight against illegal logging

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In 2008, a handful of US Congressmen quietly worked to amend the Lacey Act to address the global problem of illegal logging. The black market timber industry – widespread in some countries – supports criminal organisations, weakens governments, creates enormous environmental damage and undermines the competitiveness of legitimate timber and lumber companies (and related downstream industries).

Notwithstanding these significant harms, many observers did not expect the US Congress to pass demand-side legislation regulating the purchase of illegal timber, given inherent difficulties in enforcing such a regime. Yet the Congressmen were able to amend the Lacey Act, thereby banning the importation and sale of illegally-harvested timber and products containing illegally-harvested timber (as well as imports of any wood products otherwise exported or sold in violation of local laws). Congress also required importers of some products – timber, lumber, wooden furniture, etc. – to submit declarations upon importation, setting forth the genus, species and country of origin of the wood being imported.



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Initially, there was a question of how vigorously the Federal Government would enforce the Lacey Act amendments: Would it be yet another paper chase creating new delays at the border for imported products (but otherwise not disturb the *status quo* for importers), or would the Lacey Act amendments dramatically change the regulatory environment, requiring importers to conduct more due diligence on their supply chains? The question remains open, but the Federal Government recently indicated (yet again) that it will not hesitate to raid corporate headquarters and warehouses when it gains information suggesting potential Lacey Act violations.

On 26 September 2013, special agents of Immigration and Customs Enforcement (ICE), the Department of Justice (DOJ), and the US Fish and Wildlife Service (FWS) jointly executed a search warrant on the Toano, Virginia, headquarters of Lumber Liquidators, a publicly listed company. The agents also searched a Lumber Liquidators store in Richmond, Virginia. The hardwood flooring company has confirmed that the investigation concerns the importation of certain of its wood products. Lumber Liquidators issued a press release one day after the

raid stating that it is cooperating with the government to provide requested information. Unlike past raids involving the Lacey Act amendments, however, there was no evidence of the federal agents seizing any products from Lumber Liquidators.

Although the affidavit and search warrant for the investigation are sealed, one local television station reported that several original documents outlining the goals of the raid were found in a nearby parking lot at the time of the raid. These documents reportedly indicate that the wood products in question (presumably wood flooring, given Lumber Liquidators' business) may have been manufactured from timber illegally harvested in the Russian Far East (RFE), the habitat of the endangered Siberian tiger.

Evidence now suggests that a non-government organisation – the Environmental Investigation Agency (EIA) – precipitated the raid by compiling a report detailing illegal harvesting of timber in the RFE and how that illegally-harvested timber reaches the United States as hardwood flooring. Specifically, EIA, which is based in both Washington, DC, and London, published a 64-page report on 11 October 2013, entitled

'Liquidating the Forests: Hardwood Flooring, Organized Crime, and the World's Last Siberian Tigers' on its webpage. The report asserts that Lumber Liquidators purchases ash, oak, linden and elm originating in the RFE from Suifenhe Xingjia Economic and Trade Company, a Chinese supplier. EIA reports that Chinese sawmills process illegally-harvested timber from the RFE and furnish documents to purchasers that falsify the origin of the timber for export from China and sale to foreign retailers. This process may include relabelling timber harvested in the RFE as timber harvested in China. EIA asserts that widespread illegal logging operations in the RFE target nut-bearing hardwood tree species, a key link in the food chain that ultimately sustains the remaining wild Siberian tigers. EIA published the report after the federal government's raid on Lumber Liquidators, but asserts that it provided a draft of the report to the government in advance of the raid.

The Lumber Liquidators raid was not the federal government's first raid enforcing the Lacey Act, but it is notable as the first raid following its controversial enforcement efforts against Gibson Guitar Corp. (Gibson). The raid against Gibson in 2009 was the first major Lacey Act enforcement



action brought against a wood importer since the Act was amended in 2008, but it was also notable because the agents conducting the raid were armed (unlike the agents conducting the raid against Lumber Liquidators, according to available information). The enforcement picture became muddled after the initial raid, however. Because the government was slow to initiate a formal forfeiture proceeding against the wood that had been seized during the raid, Gibson initiated its own civil action to reclaim the wood seized during the raid. Then, in 2011, the federal government conducted a second raid on Gibson's facilities in

Nashville and Memphis, Tennessee. Gibson officials speculated that this second raid may have been a form of bullying from the federal government, given its pending reclamation action. Ultimately, the Gibson investigations led to a 6 August 2012, criminal enforcement agreement, under which Gibson agreed to pay a \$300,000 penalty to avoid criminal prosecution for violations of the Lacey Act as well as forfeiting the wood that the federal government had seized during the two raids. But in a press release issued on the same day as the settlement, Gibson CEO Henry Juskiewicz maintained the company's innocence

and attributed the settlement to the high cost of continued litigation.

If not for the EIA's report and its work with the federal government, it seemed possible that there could have been a lull in enforcement efforts targeting illegal logging. Instead, the Lumber Liquidators raid has marked a new chapter in the government's efforts to enforce the Lacey Act's prohibitions related to illegal logging. The raid may or may not result in any enforcement actions. Nonetheless, the raid shows that the federal government will not hesitate to investigate importers when it believes it has credible evidence of potential Lacey Act violations. ■