

The Lacey Act and the Paper Industry



The Lacey Act, initially enacted in 1900 by President William McKinley, is the United States' oldest national wildlife protection statute. It serves as a tool to combat trafficking in "illegal" wildlife, fish or plants and products and control exploitation of protected wildlife.

Revisions in the 1930's and 40's expanded protections internationally. The act was overhauled in 1981 to dramatically increase penalties and broaden species covered by the act.

In 2008 the Food, Conservation and Energy Act expands Lacey protection to broader range of plants and implements new declaration requirement relating to plant products.

Section 8204. Prevention of Illegal Logging Practice

Now the Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of the U.S., a U.S. State, or most relevant foreign laws.

Passed May 22, 2008 (effective immediately)

How does this impact the Paper Industry?

Under the Timber Act, it is unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of the U.S., a U.S. State, or most relevant foreign laws.

Impact to the Paper Industry

The new law revisions prohibit the trade in illegally sourced plant and plant products which include lumber, furniture, pulp and paper

Illegal is defined as:

Theft of plants

Procurement from protected areas

Procurement without authorization

Procurement without paying applicable taxes, royalties, or fees

Violation of existing import/export bans

Importers of articles under the applicable tariff codes are required to declare the country of origin of product(s) as well as the genus and species of the plant fiber

Consequences of Violation

What are the consequences of the Lacey Act violation?

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Consequences of Violation

Criminal felony with fines up to \$500,000 for the corporation and \$250,000 for an individual or twice the gain from the trade

Possible prison terms of up to 5 years

Forfeiture of all goods

Consequences of Illegal Logging

What are the consequences of illegal logging?

Possible prison terms of up to 5 years

Forfeiture of all goods

Consequences of Illegal Logging

Serious global impacts for ecosystems, climate, economies, human rights and law

Increased climate impacts, loss of biodiversity, flooding and water quality issues, droughts, wildfires

Violation of civil and human rights, impact quality of life for local communities, especially indigenous people

Timber harvesting, processing, transport or trade in contravention of a country's laws

Robbing governments of economic value, creating unlevel playing field for global forest products industry

Accordance with the Act

How to behave in accordance with the Act

Reduced climate regulation, loss of biodiversity, flooding and water quality issues, droughts, wildfires

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Accordance with the Act

“Due care” is a legal term that refers to actions taken by the importer that represent the product is legal, not just that the supplier said it was. The legal definition of “Due care” is “that degree of care which a reasonably prudent person would exercise under the same or similar circumstances”

Companies should exercise “due care” when purchasing goods and the maximum penalties will be reduced to:

Forfeiture of goods if product comes from illegal sources

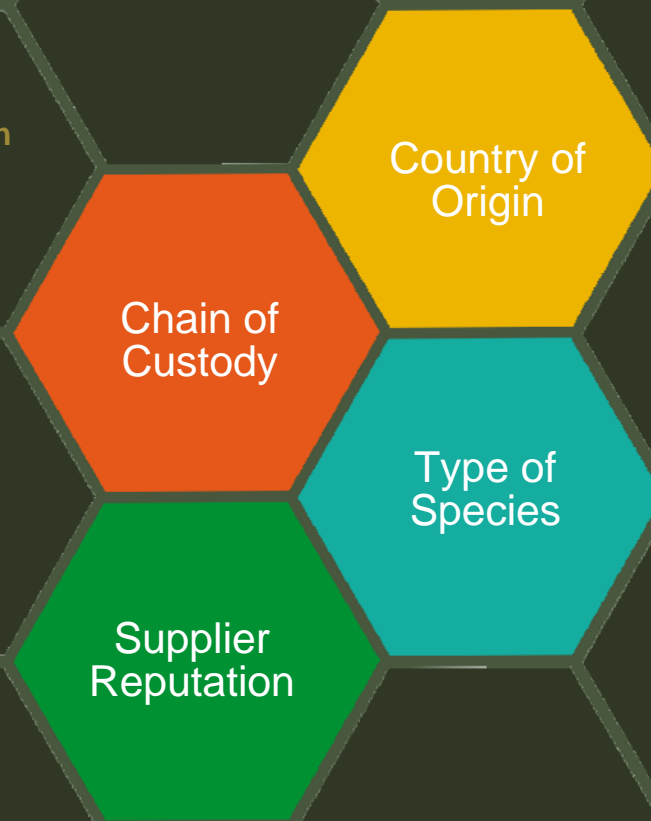
Fines of \$250 and potential forfeiture of goods if only the import documentation was false

Accordance with the Act

It doesn't matter if the supplier told the importer that it was legal, if it was illegal it is in violation of the act

There is no “innocent owner” provision

**Due Care
Four Areas of Consideration**



“Due care” are the efforts by the importer to ensure that the product is legal, not just that the supplier says it is and “that degree of care which a reasonably prudent person would exercise under the same or similar circumstances”.

Due Care Risk Management

Low Risk, Highest Level of “Due Care”



Certified Forests – COC
FSC Controlled Wood Certification
SFI Fiber Sourcing Certification (SFIS)
Unknown Sources (imports and many private labels)

High Risk, Lowest Level of “Due Care”

Timeline for the Act

Enforcement is being phased in.

April 1, 2009: *Wood, Fuel Wood, Sawn Wood, Handles, Veneer*

October 1, 2009: *Charcoal, Plywood, Frames, Tableware*

April 1, 2010: *Tools, Walking Sticks, Pianos, Revolvers, Toys*

Merchants, printers, and end users have begun to request information and documentation about our wood sourcing

Facts about the Lacey Act

With no “innocent owner” the importer must ascertain how well they trust the supplier and the supplier’s supply chain

Imports from Southeast Asia or made with fiber from Southeast Asia (China) will be highly scrutinized

Facts about the Lacey Act

World Region	Annual Forest Area Percentage Lost (Gain) 2000 – 2005
Southeast Asia	- 1.3 (Indonesia - 2.0)
Central America	- 1.2
West Africa	- 1.2
East Africa	- 1.0
United States	+ 0.05
World	- 0.18

According to the United Nations Food and Agricultural Organization (FAO) "State of the World's Forests 2009" issued March 16, 2009

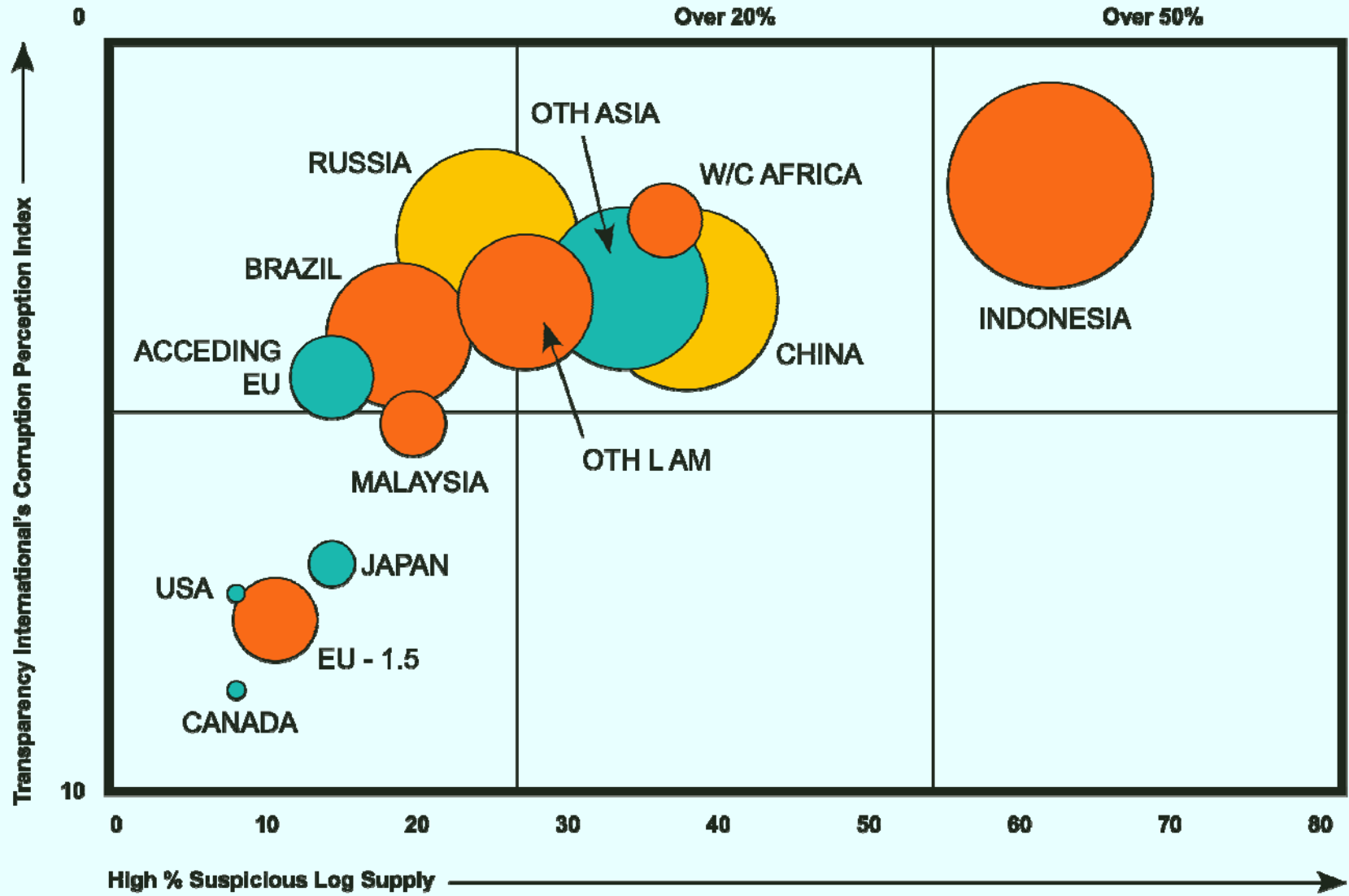
Indonesia

Direct wood products exports to U.S. 2006: US\$966,536,000

Pulp and paper: \$232,239,000

Estimated % of illegally-sourced wood in export stream: 70-80%

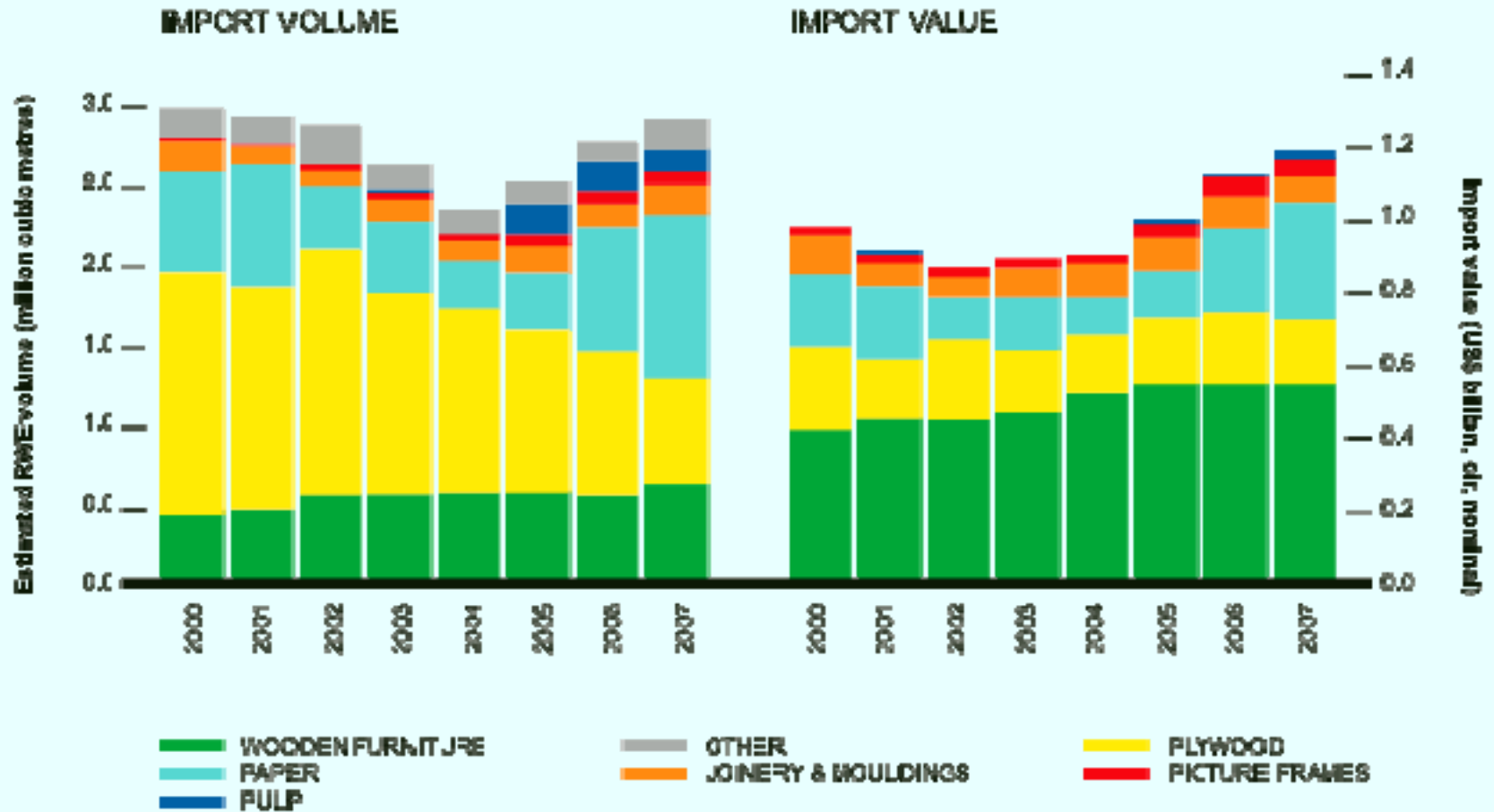
Corruption and Illegal Logging



Source: World Resources Institute

Highest Risk: Indonesia

US Direct Imports of Indonesia's Forest Products, 2000-2007, by Volume and Value



Source: US ITC Trade 90 Data, compiled by James Hewitt

Potential Lacey Act Violation Scenario

A merchant imports a product from Southeast Asia

Supplier provides assurances that it is from legal sources

ENGO that has been following illegal harvests and production documents that some of the raw material is from illegal sources

The product and importation violate the Lacey Act

The merchant is deemed to have not exercised “due care”

The entire shipment is confiscated and forfeited

The merchant house is liable for up to \$500,000 and individuals involved for up to \$250,000

Responsible individuals are subject to possible prison sentences up to 5 years

**What are major corporations
doing to prepare?**

WAL★MART®

The world's biggest retailer says:

Walmart is conducting trainings with buyers and suppliers, strengthening its internal supplier documentation requirements, and implementing procedures related to Lacey declaration requirements. Walmart's Senior Manager, Strategic Sourcing notes, **"The Lacey Act is an important tool that reinforces environmental commitments towards responsible sourcing."**

Crate&Barrel

An example of change afoot:

One supply chain currently preparing for legal verification originates in Indonesia and supplies a market in the USA. The two forest sources and two factories that contribute to supply chain have undergone Verification of Legal Origin (VLO) by the Rainforest Alliance's SmartWood program. **Once the production is completed, VLO verified furniture made with wood from a community managed forest and a State Forest District in Java, Indonesia will be available in Crate & Barrel's retail outlets in the USA.** The project, implemented by the Tropical Forest Trust with funding from USAID through The Nature Conservancy's RAFT program, and verified by the Rainforest Alliance, seeks to provide a pilot demonstration in preparing companies for Lacey Act regulations.

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Every day is Earth Day.



\$998

Sony® 40" LCD Full HDTV
 • 40.0" diagonal viewing area
 • 1920 x 1080 (1080p) resolution
 • 2,500:1 contrast ratio
 • 3 HDMI, 2 component, 1 PC, 1 S-video, and 2 A/V inputs
 2-Year Product Care Plan available.



\$219

Mainstays® Wood Arm Futon
 • Quilted 6" mattress with 100% recycled fill
 • Converts to a full size bed
 • 33"H x 37½"D x 80¾"W
 Wood arms are made from 100% FSC-certified lumber.



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Wood arms are made from 100% FSC-certified lumber.



Want to save energy and money?
 Look for the Energy Star label.



\$598

HP® G60-249WM Laptop Computer
 • 3GB memory
 • 250GB hard drive
 • Reads and writes CDs and DVDs



Rollback
3.50
 Was 4.22

Georgia-Pacific Recycled Copy and Print Paper
 8½" x 11", 500 sheets.
 Certified by the Sustainable Forestry Initiative. Contains 30% post-consumer recycled fiber.



11.88
 each

Philips® Surge Protector
 • 6 child safety outlets and 1 phone line protect your



Rollback

3.50
 Was 4.22

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8½" x 11", 500 sheets.

Certified by the Sustainable Forestry Initiative. Contains 30% post-consumer recycled fiber.



Lacey Act Guidance

1. **Pay attention to your customers** – Be prepared to answer increasingly detailed questions about wood sourcing.
2. **Understand your sourcing** – Put a process in place to investigate the product supply chain and provide documented assurance that potentially illegal wood products are not being received and used.
3. **Require more than a “paper” assurance of adherence** – Some of the provisions of the Lacey Act apply regardless of whether a firm has actual knowledge of illegalities in the sourcing of a product’s raw materials.

Lacey Act Guidance

4. **Do not rely solely upon certificates of legality or sustainability** – A certificate of legality or sustainability, although helpful, may not provide a shield against enforcement. If the U.S. government has sufficient reason to believe that the wood was obtained illegally, it can take enforcement action regardless of whether the product is accompanied by such a certificate.
5. **Structure contracts to protect your financial interests** – Wood or paper product importers can structure contracts so that they pay for, and take possession of, the product only after it has been cleared through Customs.
6. **Pay attention to the regulations** – A Federal Register notice published February 3, 2009, sets forth the initial schedule and solicits comments, due by April 6, 2009.
http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml

NewPage is Lacey Act compliant.

NewPage

Sustainable Forest Management systems in place at all ten mills.

Fiber is sourced from USA and Canada, the best regions in terms of transparency and negligible amount of illegal logging.

Reputation going back over 100 years of operation.

Use of common, non threatened or endangered fiber types.

Able to provide needed documentation and substantiation.

Important things to know.

New Declaration Requirement Relating to Plant Products

If required the declaration must be made at time of importation

Declaration must contain:

Scientific name of plant (including genus & species)

Value of importation

Quantity of the plant

Name of the country in which the plant was harvested

For paper and paperboard products with recycled content, state the average % recycled content without regard for species or country of harvest

Declaration requirement does not apply to packaging material used to support, protect or carry another item (unless the packaging material itself is the item being imported)

Chain of Custody

Forest certification is a means of ensuring that **responsible** practices are being utilized and that forest resources are well managed.

Independent, “third-party” certification bodies certify forests providing confidence in the fiber source. They assess forest management using appropriate principles, criteria, and standards. Certifiers evaluate both forest management activities (forest certification) and tracking of forest products (chain-of-custody certification).

For those companies who **manufacture** or trade certified products, a specific form of certification applies. “Chain of custody” (COC) certification process is like an inventory control system. COC allows products to be segregated and identified as having come from a particular source - in this case, a certified forest.

Chain of Custody

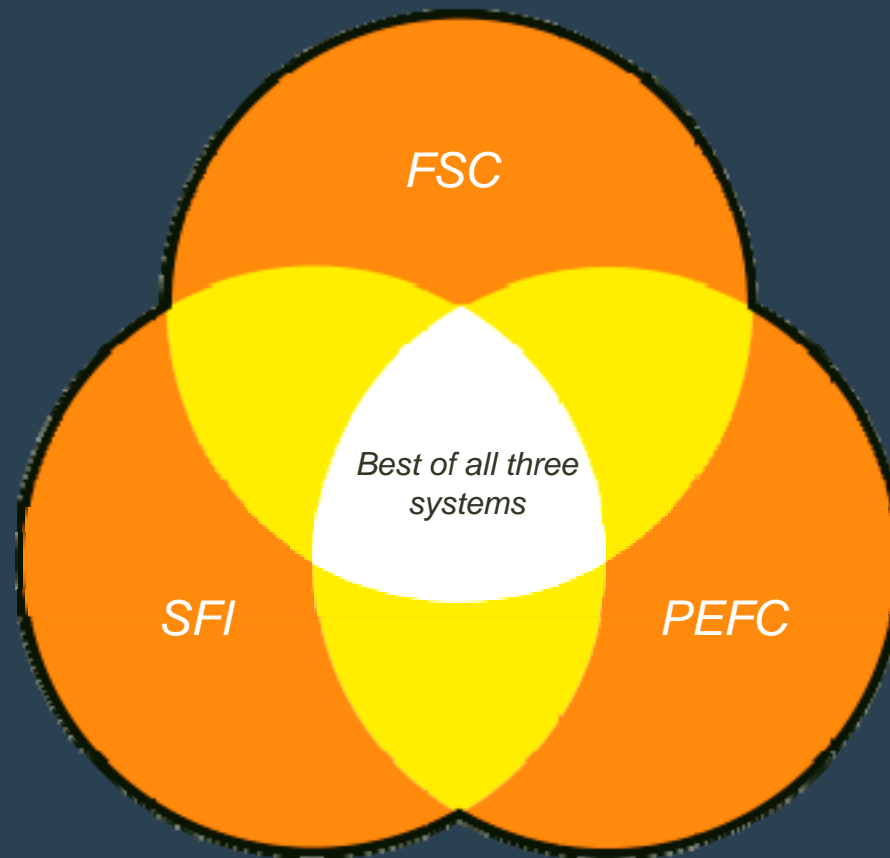
Sustainable Forest Management (SFM) chain of custody labeling is only possible when all steps of the supply chain have the same certified chain of custody system in place (FSC, SFI or PEFC).

Labeling must adhere to the relevant certification system requirements as defined within the systems.

Independent studies have highlighted the strengths and weaknesses of the various forest certification schemes.



Chain of Custody



Sourcing products that contain any of these certifications can provide assurance that fiber has come from sustainable, legal sources, but is not a guarantee. You should know and trust your paper supply chain partner.

Supplier Reputation

Credible and transparent communication of fiber sources and conformance to local and national laws.

History of process improvements.

Sharing of data beyond simple requirements; carbon emissions, water usage, air emissions, solid waste to landfill, etc.

Third party independent assessments.



NewPage keeps you informed

NewPage sponsored a Target Marketing Webinar on the Lacey Act

All About Sustainability Series

Webinar date: June 30, 2009

E-mail Subject Line: New Regulations on Paper Procurement

Title: Ready for the Lacey Act?

Deck: What You Don't Know About Your Paper CAN Hurt You

URL: <http://w.on24.com/r.htm?e=141901&s=1&k=F7C58851484F26E7FF23DD5801CE2010&partnerref=newpage>

Speakers/presenters:

Andrea Johnson, Director of Forest Campaigns for the Environmental Investigation Agency (EIA), will provide background on the Lacey Act, discuss types of illegal activity that can occur in paper supply chains, describe some high risk areas for illegal logging, and outline what NGOs are doing to leverage the Lacey Act.

Elinor Colbourn, Senior Trial Attorney at the U.S. Department of Justice, will explain the various degrees and types of violation. She will also explain practicing due care and discuss reasonable actions and measures companies have taken to try to exercise due care.

Rick Merdan, Marketing Strategy Manager – Environmental, for NewPage Corp., will provide practical examples from a supplier perspective of meeting the requirements of the Lacey Act.



NewPage Products with Chain-of-Custody Certifications for all applications

Centura®

Futura® Laser Sheets

Arbor Plus™

ArborWeb Plus® Web

Productolith® Sheets

Productolith® Pts. Sheets

Productolith Pts. Digital®

Sterling® Ultra Sheets

Sterling® Ultra Digital Sheets

Sterling® Ultra Digital™ for HP Indigo Sheets

Anthem® Sheets

ArborWeb® Web

Fortune™ Sheets

Blazer Digital® Sheets

Dependoweb® Arbor Web

Consoweb® Arbor™ Web

Expedition® Web

Voyager® Arbor™ Web

Voyager® FC Web

In addition, many NewPage products not listed above can be manufactured with FSC, SFI and PEFC chain-of-custody certification upon request.