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# **‘Due Care’ ...It’s the Law!**

## **Technical Bulletin - Understanding ‘Due Care’**

### **Verification of Legal Origin/Legal Compliance under U.S. Lacey Act, U.S. Foreign Corrupt Practices Act, Forced Labor Law and U.S. Buy American Act**

The U.S. Lacey Act is a U.S. Federal regulation amended in 2008 that combats the commercialization of illegal harvested plant products which includes but is not limited to timber products. The goal of the Lacey Act is to prevent the sale of illegally harvested timber within the United States. Enforced by the U.S. Department of Agriculture and U.S. Department of Justice, violation of the U.S. Lacey Act may result in the seizure of goods, fines and prison sentences subject to the level of ‘Due Care’ or lack thereof demonstrated by a company and its employees exposed during the course of an investigation. Violations of CITES (Convention on the International Trade of Endangered Species, OFAC (U.S. Sanctions Law), U.S. Foreign Corrupt Practices Act (15 U.S.C 78dd-1), ‘Forced Labor Law’ (19 U.S. Code 1307) and U.S. Buy American Act must also be considered as components of “Due Care” under any ‘Due Care’ SOP (Standard Operating Procedure).

The importer that first brings the timber into the U.S. is responsible for the legal origin and trade of the wood and must take all precautionary measures in order to ensure the timber was legally harvested, manufactured, exported and imported in compliance with all international laws pertaining to the legal trade of wood products as referenced above.

In order to ensure the legal origin of the timber we trade, Timber Holdings implemented ‘Due Care’ SOP Standards, Policies and Procedures as part of our Green By Nature...Build with Conscience Program.

The Due Care Standards, Policies and Procedures that we developed are composed of various benchmarks that we apply to each shipment in order to eliminate the risks that the wood is ‘Due Care’ compliant.

Every country has its own laws and regulations and requires a specific ‘Due Care’ bench marks. The outline below is our ‘Due Care’ method for the timber we source from Brazil. Part of the ‘Due Care’ compliance is based upon the documentation that is obtained from the exporters in Brazil, documents that show the entire Chain of Custody of the timber from forest to Import.

In order to ensure the legal origin of the timber, we distinguish 4 key points:

1. Vet your suppliers
2. Understanding the supply chain
3. Understand & know how to interpret the documentation
4. Take risk mitigation measures

## 1. Vet your Suppliers.

Before we place orders all Suppliers are subjected to a Risk Assessment to determine that they are operating in good standing with all of the appropriate regulatory bodies within the Country of Harvest and if there are any historical or outstanding issues that might require deeper evaluation. You can tell a lot about a company's future from their past. All Suppliers are also required to submit certificates of compliance and indemnification for both the U.S. Lacey Act and U.S. Foreign Corrupt Practices Act confirming their commitment to the legal harvest and trade of wood products.

## 2. Understanding the supply chain ... Every step is and must be controlled.

Under the U.S. Lacey Act responsibility rests at every level of the supply chain.

[Forest](#) > [Sawmill](#) > [Planning Mill](#) > [Exporter](#) > [Importer](#) > [Wholesaler](#) > [Retailer](#) > [Contractor](#) > [End User](#)

The following are the four main types of Forest Management Plans: Federal concessions, State concessions, Private concessions, and Temporary projects. Each type of FMP (Forest Management Plan) has its own specific rules and it is important to understand this in order to judge about legality. Furthermore, it is key to understand and identify the different steps in the supply chain.

## 3. Understand and know how to interpret the documentation

A typical supply chain consists of an AUTEF, followed by DVPF 1, GF 1, GF 3, a GF 3 Exportation, Certificate of Origin and Lacey Act Declaration. At Timber Holdings USA we take documentation some steps further.

Each step of the supply chain is accompanied by a set of documents. An explanation of each is described as follows:

**Autef** (*Autorização de Exploração Florestal*) Forest Exploitation Permit: A logging permit issued by Semas (Environmental governing body in Brazil) that allows a landowner/operator to harvest timber inside an annual production unit (*UPA*), within the limits specified in the Annual Operational Plan (*POA*).

The Autef shows the legal management of the forest and also contains the inventory of the forest. Besides validities, location, forest engineer, etc, a crucial parameter is the volume of e.g. species in a specific forest.

**Lar** (*Licenciamento Ambiental Rural*) Rural Environmental Licensing issued by Semas for economic activities on the rural property.

**CEPROF** (*Cadastro de Exploradores e Consumidores de Produtos Florestais*): A register that contains details of the sites where forest products are harvested or who buys them for commercial purposes. CEPROF is also used to generate an individual ID number for the company in the register.

**DVPF** (*Documento de venda de Produtos Florestais*) Sales document of Forest products.

**GF (Guia Florestal):** A transport document generated in the Sisflora or DOF system in order to authorize the transportation of timber. Every consignment of timber must be accompanied by a GF as it moves between 2 stages in the supply chain.

GF 1, GF 3, Export GF 3 - These documents show the volumes of timber that were sawn and eventually exported.

Conversion rates are applied to judge about the origin:

Logs => sawn: 55% max yield

Sawn=> decking 85% max yield

GF3 Export must show the final destination with the volumes and scientific name while avoiding the double use of it.

DVPF/GF. With these documents, we verify the volumes of logs, the dates and duration of the transports, the geographical location and the scientific names associated. The GF documents have to match the DVPF.

**DOF (Documento de Origem Florestal):** Forest Origin Document. A term applied by IBAMA to the GF; also the name of the Federal timber chain-of-custody system managed by IBAMA (Sistema DOF)

**Supplier Declaration of Source Controlled Wood:** Issued by the exporting supplier this declaration must list the entire chain of custody of the materials to be shipped from point of harvest through export including supporting documentation.

**Supplier Declaration of Compliance and Indemnification U.S. Lacey Act:** Supplier Verification of understanding and compliance to the U.S Lacey (Legal Timber) Act.

**Supplier Declaration of Compliance and Indemnification U.S. Foreign Corrupt Practices Act:** Supplier verification of understanding and compliance to the U.S. Foreign Corrupt Practices (anti-bribery) Act.

**Supplier Declaration of Compliance and Indemnification Forced Labor:** Supplier verification of understanding and compliance to the U.S. Forced Labor laws.

**Slave Labor List:** Issued by the Brazilian Ministry of Labor. This list documents those companies having been investigated for unfair labor practices. All companies identified in the chain of custody are vetted against this list.

**Certificate of Origin (Certificado de Origem):** Issued by the Brazilian Chamber of Commerce the Certificate of Origin confirms Species, Volume, Country of Origin, Exporter, Importer, and is required as part of any import document package.

**Lacey Act Declaration:** Importer must declare to the U.S. Department of Agriculture, Species (botanical name) and Volume imported per shipment. The U.S. Department of Agriculture cross checks this against CITES (Convention on the International Trade of Endangered Species). Fraudulent submittal of this document is a felony violation subject to severe monetary penalties and potential incarceration (see U.S. Lacey ACT Frequently Asked Questions).

**Importer Certificate of Compliance U.S. Buy American Act:** Importer confirms understand and compliance to the U.S. Buy American Act. Products sold into U.S. Federal projects must conform to the U.S. Buy American Act. This certificate of compliance verifies that there are no domestically available species of wood that have the comparable combined technical properties of Iron Woods.

**We only accept the timber when all the documentation is correct and the above conditions have been met, at which time we issue a 'Certificate of Compliance - Green By Nature'.**

#### **4. Take risk mitigation measures... Self-regulation is not enough.**

While many importers assume the risks associated with self-managed legal verification, Timber Holdings leaves nothing to chance. Timber Holdings USA engages an independent third party NGO to audit chain of custody documentation from harvest to export. Upon verification of compliance at every level we receive an Independent Third Party "Verification of Legal Origin/ Verification of Legal Compliance" document either recommending or not recommending acceptance of goods.

**Based upon these third party audits, suppliers are placed into one of the three following categories.**

**Red** – Suspended. Vendor has been found to be non-compliant and supply is not recommended by Independent Third Party NGO.

**Yellow** – Chain of Custody is clean but NGO has some concerns that require additional evaluation, oversight, clarification or corrective action.

**Green** – Chain of Custody documentation is compliant. Product is recommended for purchase and shipment.

A company must have Green status to receive purchase contracts from Timber Holdings USA.

Note\* Timber Holdings holds FSC chain of Custody Certificate #00048. FSC certified products supplied by Timber Holdings are by nature of the FSC's voluntary participation and certification policies and procedures, compliant with Green By Nature 'Due Care' Standards Policies and Procedures.