The U.S. Lacey Act
A policy and implementation update

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Beijing Update Meeting, April 2009
EIA and Presentation overview

- EIA is an NGO based in London and Washington, DC
- EIA leads a civil society coalition in support of Lacey Act passage, implementation and enforcement
- EIA is in frequent communication with private sector actors and government officials regarding Lacey
- Today’s presentation:
  - Overview of Lacey Act
  - Declaration requirement policy update
  - Implementation efforts update
  - Time for questions
Lacey Act Overview

• The Lacey Act prohibits trade in plants and plant products sourced or traded in contravention of another country’s sovereign laws or the laws of a U.S. State.
• The Lacey Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant.
• The Lacey Act requires importers to submit a declaration for certain plants and plant products.
• The law has been in effect since May 22, 2008.
Penalty structure

- Penalties for violating the Lacey Act vary depending on the company’s or individual’s knowledge and intent
  - Breaking a law or misdeclaring products with intent can lead to fines up to $500,000 or jail time
  - Not exercising “due care” [due diligence] can lead to a variety of penalties, including loss of product
  - Trade in illegal wood without knowledge can still lead to loss of product, if government proves it
The “due care” principle

• “Due care” is exercise of reasonable caution and due diligence in determining the origin and legality

• It is an evolving and flexible concept

• “Due care” principle places emphasis on risk assessment as a key Lacey compliance strategy
The declaration requirement (1)

• What it is: information gathering
  – Scientific species name
  – Country of harvest origin
  – Value and volume

• What it is not:
  – A requirement to provide evidence of *legality* to the US Customs service
  – A requirement of third-party *certification*
The declaration requirement (2)

• The US government approach: Achieve law’s intent without undue burden on business. “with the aim of preventing the trade of illegally harvested plant and plant products without disrupting legitimate commerce”

• Congress has made recommendations to the interagency implementing team, based on pragmatic conversations with industry and NGO stakeholders. Schedule being developed “taking into consideration risk and an importer’s ability to accurately identify a plant or plant product and the country of origin”
The declaration phase-in (1)

- Paperless system: an **electronic customs entry system** has been developed (form PPQ-505)
- Phase 2 began on April 1\(^{st}\), 2009: we are **currently in voluntary pilot phase** – use of system is encouraged
- **Mandatory declarations** for Phase 2 will begin on May 1\(^{st}\), 2009
- Subsequent phases at six month intervals
- Initial exemption of many complex processed plant-based products, with evaluation after two years
The declaration phase-in (2)

Beginning May 1\textsuperscript{st} 2009:

- 4401 (fuel wood)
- 4403 (wood in the rough)
- 4404 (Hoopwood, stakes, etc)
- 4406 (railway sleepers)
- 4407 (sawn wood)
- 4408 (sheets for veneer)
- 4409 (flooring, molding, etc)
- 4417 (tools, broom handles, etc)
- 4418 (carpentry, doors, etc)
The declaration phase-in (3)

Phase 3 (still in draft form), October 2009
- Most of the remaining parts of Chapter 44
  - Fiberboard & other composites
  - Plywood
  - Tableware, etc
- Chapter 47 (Wood pulp)

Phase 4 (still in draft form), April 2010
- Ch. 4421 (nesoi)
- Subchapters within Chapter 48 (paper products)
- Subchapters within Chapter 94 (furniture)

And Phase 5?
- Not yet defined
The declaration phase-in (4)

- Enforcement will be tied to phase-in schedule
- Packaging (e.g. pallets, boxes) is excluded
- Declaration of tags, labels, manuals, papers etc accompanying a product will not be enforced
- Definition of “common food crop” and “common cultivar” is still underway
- Possible points of further refinement?
  - ‘recycled materials’
  - Composite products
  - Identification to scientific species vs. “spp.”
Private sector activities

• Lacey Act is a flexible and business-friendly model, but may not be easy to understand at first
• Businesses are clarifying supply chains and requesting new information from suppliers
• Trade associations are spreading information to members
• 3rd party providers report “a significant increase in the interest in verification services”
Civil Society Activities

• Communicating accurate information about the law to businesses and stakeholders in the US and around the world
• Creating materials (documents, videos, websites) to assist with legal wood sourcing and risk assessment
• Monitoring trade and gathering information that might indicate violations of the law
Looking forward

• Enforcement of Lacey Act statute by US government in coordination with producer countries
• A clear need for harmonious demand-side policies in other consumer markets
• Links to forest-climate policy arena: legal timber trade should underpin a REDD mechanism in UNFCCC
Thank you

- Official information:  

- Common names for species in wood trade:  
  [www2.fpl.fs.fed.us/CommNames2000.html](www2.fpl.fs.fed.us/CommNames2000.html)

- Further resources:  
  [www.eia-global.org/lacey](www.eia-global.org/lacey)