

# The U.S. Lacey Act

## A policy and implementation update

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# EIA and Presentation overview

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- 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

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- 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

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- 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



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|-------------------|---------------|-----------------|---|
| “故意” 从事<br>被禁止行为  |               | 从事非法来源<br>木材的交易 | 刑事重罪罚款（对公司，不高于50万美元；对个人，不低于25万美元，或是该笔交易最大收益/损失金额的两倍）。或可能不超过5年的监禁。没收货物。              |
|                   |               | 进口报告造假          | 如上所述的刑事重罪罚款，或者高于10万美元的民事罚款。可能不超过5年的监禁。没收货物。   |
| “不知情” 从事<br>被禁止行为 | 没有履行“应有的注意责任” | 从事非法来源 木材的交易    | 刑事性轻罪罚款（对公司不高于20万美元；对个人不高于10万美元。或是该笔交易最大收益/损失金额的两倍）。可能不超过1年的监禁。或者不高于1万美元的民事罚款。没收货物。 |
|                   |               | 进口报告造假          | 250美元民事罚款。<br>可能没收货物。   |
|                   | 履行了“应有的注意责任”  | 从事非法来源          | 没收货物。   |
|                   |               | 进口报告造假          | 250美元民事罚款。<br>可能没收货物。   |

Source: “The Lacey Act: Frequently Asked Questions”, translated with support from Forest Trends. Available at [www.eia-global.org/lacey](http://www.eia-global.org/lacey)

# The “due care” principle

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- “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)

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- 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)

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- The US government approach: Achieve law's intent without overdue 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)

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

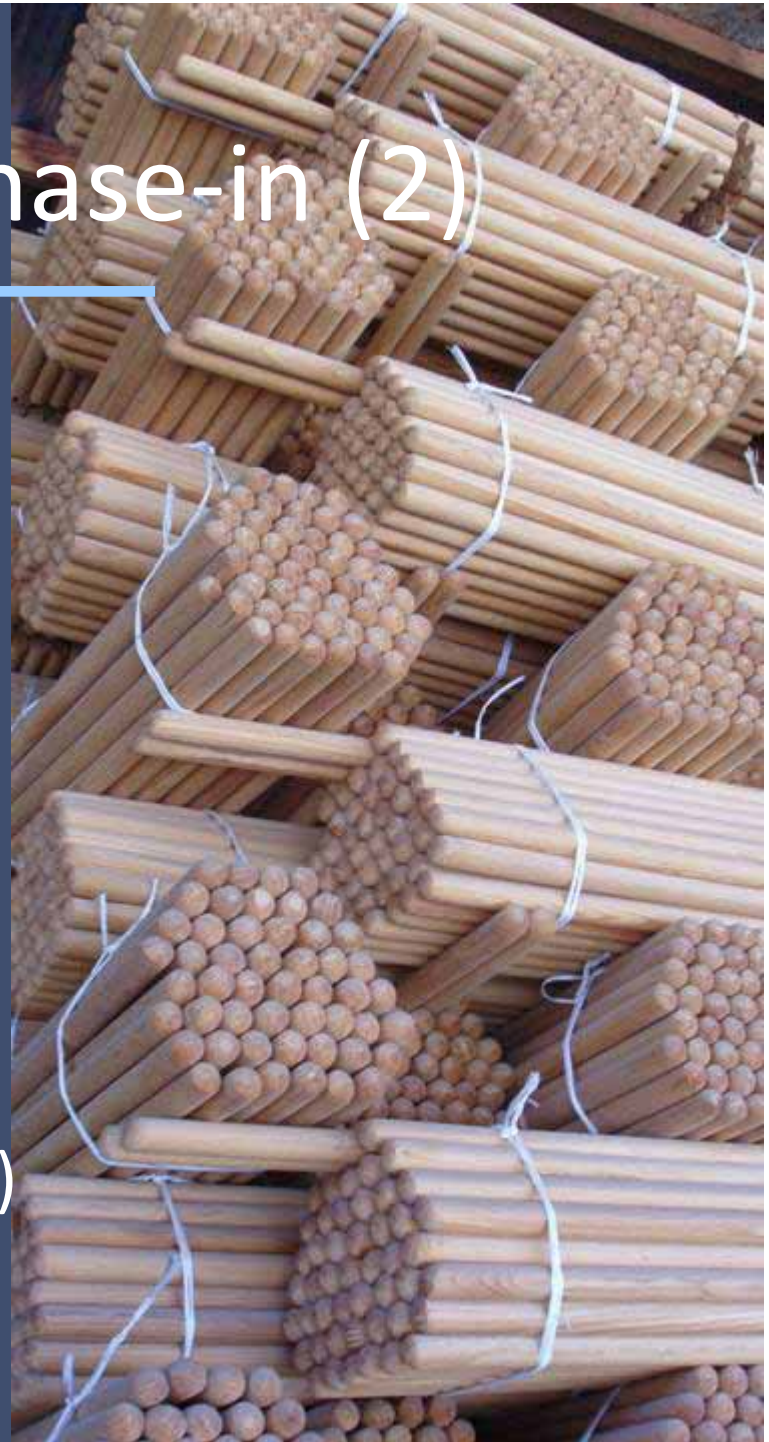


# The declaration phase-in (2)

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Beginning May 1<sup>st</sup> 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)

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**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)

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- Enforcement will be tied to phase-in schedule
- Packaging (eg. 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

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- 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
- 3<sup>rd</sup> party providers report “*a significant increase in the interest in verification services*”



# Civil Society Activities

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- 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



## 1. What is the U.S. Lacey Act

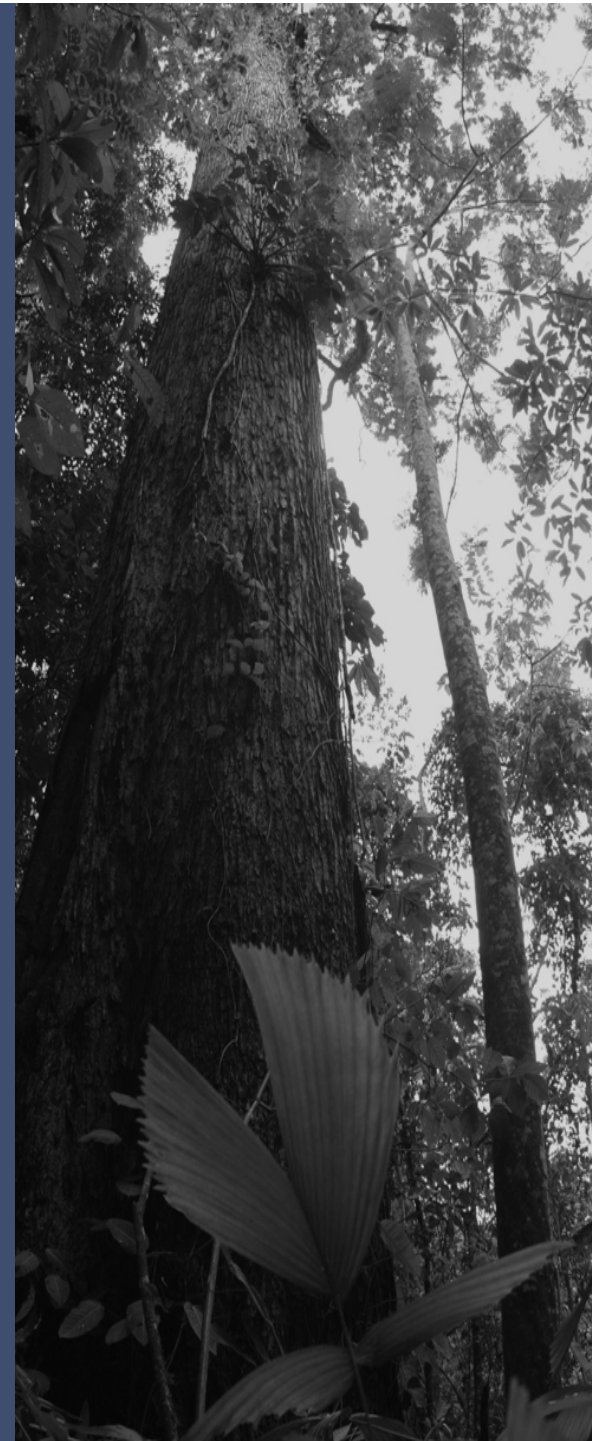
On May 22, 2008, the U.S. Congress passed the Lacey Act, which prohibits the trade of illegal timber and wood products. The act was first championed by Sen. Max Baucus, who first championed it. While the Lacey Act has the potential to combat illegal logging remain



# Looking forward

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- 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

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- Official information: [www.aphis.usda.gov/plant\\_health/lacey\\_act/index.shtml](http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml)
- Common names for species in wood trade: [www2.fpl.fs.fed.us/CommNames2000.html](http://www2.fpl.fs.fed.us/CommNames2000.html)
- Further resources: [www.eia-global.org/lacey](http://www.eia-global.org/lacey)

