



Lacey Act Primer And Updates

**United States Department of Agriculture
Animal and Plant Health Inspection Service
Plant Protection and Quarantine**

The Lacey Act Amendment: History



- It was first enacted in 1900 to combat impact of:
 - hunting to supply commercial markets
 - interstate shipment of unlawfully killed game
 - killing of birds for feather trade
- Amended in May 22, 2008
 - Now covers products, including timber, derived from illegally harvested plants
 - New declaration requirement for plant products

Responsibility Under the Lacey Act

(U.S. Government)

- APHIS
 - Plant Provisions of the Lacey Act
 - Ensure Compliance with Declaration Requirement
 - Publishes Guidance and Provides Outreach
- Fish and Wildlife Service (FWS)
 - Wildlife Provisions of the Lacey Act
 - Enforces CITES and ESA for wildlife



Responsibility Under the Lacey Act (Businesses)

- The US Importer of Record
 - Legally responsible for the shipment, contents and paperwork
 - Files the declaration
 - Broker may submit declaration on Importer's behalf
 - Has the onus of providing all of the required data to APHIS
 - Required to supply complete and accurate information



Two Sides of the Lacey Act Amendment

- *Legality Requirement*
- Declaration Requirement

Lacey Act Legal Basics

- The Lacey Act Amendments of 2008
 - Legality of Harvest
 - Private land, Protected land, Government land, etc.
 - Permits
 - Legality of Transactions
 - Taxes, fees, duties, etc.
 - Plant Protection Laws
 - Local laws
 - CITES
- No Lacey Act “Prohibited Species List”
- Additional Non-Lacey regulations for US import



Other Lacey Act Legal Basics

- The underlying foreign law violation does not have to be a criminal violation, nor one actively enforced in the foreign country.
- The underlying violation need not be committed by the person charged with violating the Lacey Act – a third party might have taken the product illegally.
- The underlying foreign law can be interpreted by U.S. Courts
- The Federal Government will always evaluate and substantiate initial information before launching full investigation

Lacey Act Violations and Penalties

- Forfeiture – strict liability
- Misdemeanors punishable by 1 year in prison and a fine of \$ 100,000 (\$200,000 for corporations)
 - In the exercise of due care, individual/corporation should have known the plant was illegally taken, possessed, transported or sold
- Felonies punishable by 5 years in prison and a \$250,000 fine (\$500,000 for corporations)
 - Knowing violation – knowledge of facts and illegality, not specific law violated

Enforcement Basics

- Fact based, not document based
- Government burden to prove to a jury of defendant's peers
- Information gained from
 - Foreign governments
 - NGOs
 - Private citizens
 - Anonymous tips
 - Data analysis - declarations
 - Industry members – whistle blowers & competitors
 - Agents on the border

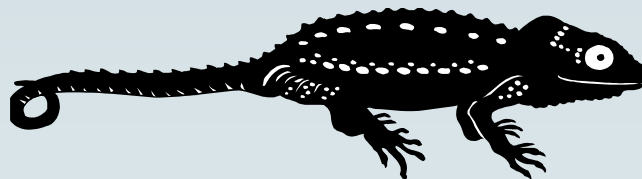
Due Care

- Legislative History
 - “Due care simply requires that a person facing a particular set of circumstances undertakes certain steps which a reasonable man would take to do his best to insure that he is not violating the law.”



Due Care (Continued)

- Due care “is applied differently to different categories of persons with varying degrees of knowledge and responsibility.
- For example, zoo curators, as professionals, are expected to apply their knowledge to each purchase of wildlife. If they know that a reptile is Australian and that Australia does not allow export of that reptile without special permits, they would fail to exercise due care unless they check for those permits.
- On the other hand, the airline company which shipped the reptile might not have the expertise to know that Australia does not normally allow that particular reptile to be exported. However, if an airline is notified of the problem and still transships the reptile, then it would probably fail to pass the due care test.”



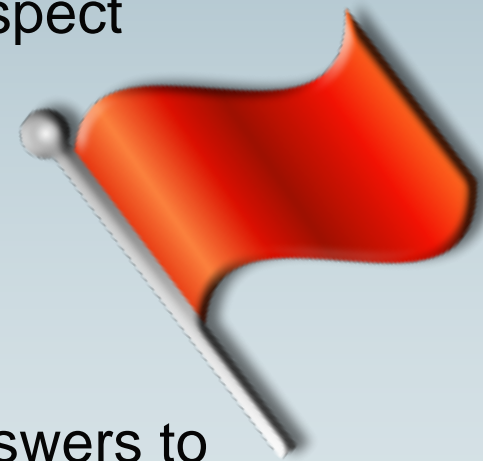
Tools to Demonstrate Due Care



- Asking questions
- Compliance plans
- Industry standards
- Records of efforts
- Changes in above in response to practical experiences

Some Examples of Common-Sense Red Flags

- Goods significantly below going market rate
- Cash only/lower price for goods without paperwork
- Paperwork facially invalid or otherwise suspect
- Unusual sales methods or practices
- Transactions fit the description of illegal transactions discussed in trade/industry publications
- Inability of suppliers to provide rational answers to routine questions



Suggested Best Practices

- Ask your overseas supplier for Genus/species
- Check botanical resources (e.g. GRIN Taxonomy)
 - Confirm validity of scientific names
 - Confirm geographic distribution
- Check with Foreign Government Authorities
 - Confirm source companies operate legally (licensed/certified)
 - Request pertinent plant protection laws (country of harvest)
- Keep complete records of your efforts
- When in doubt – Call APHIS!

Two Sides of the Lacey Act Amendment

- Legality Requirement
- ***Declaration Requirement***

SECTION 1 - Shipment Information

1. ESTIMATED DATE OF ARRIVAL: (MM/DD/YYYY)

2. ENTRY NUMBER:

3. CONTAINER NUMBER: See Attachment

4. BILL OF LADING:

5. MID:

Plant and Plant Product Declaration Form

Section 3: Lacey Act Amendment (16 U.S.C. 3372)



U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

10. DESCRIPTION OF MERCHANDISE:

6. IMPORTER NAME:

7. IMPORTER ADDRESS:

8. CONSIGNEE NAME:

9. CONSIGNEE ADDRESS:

SECTION 2 - Compliance with Lacey Act Requirements (16 U.S.C. 3372(f))

For each article or component of an article, provide the following:

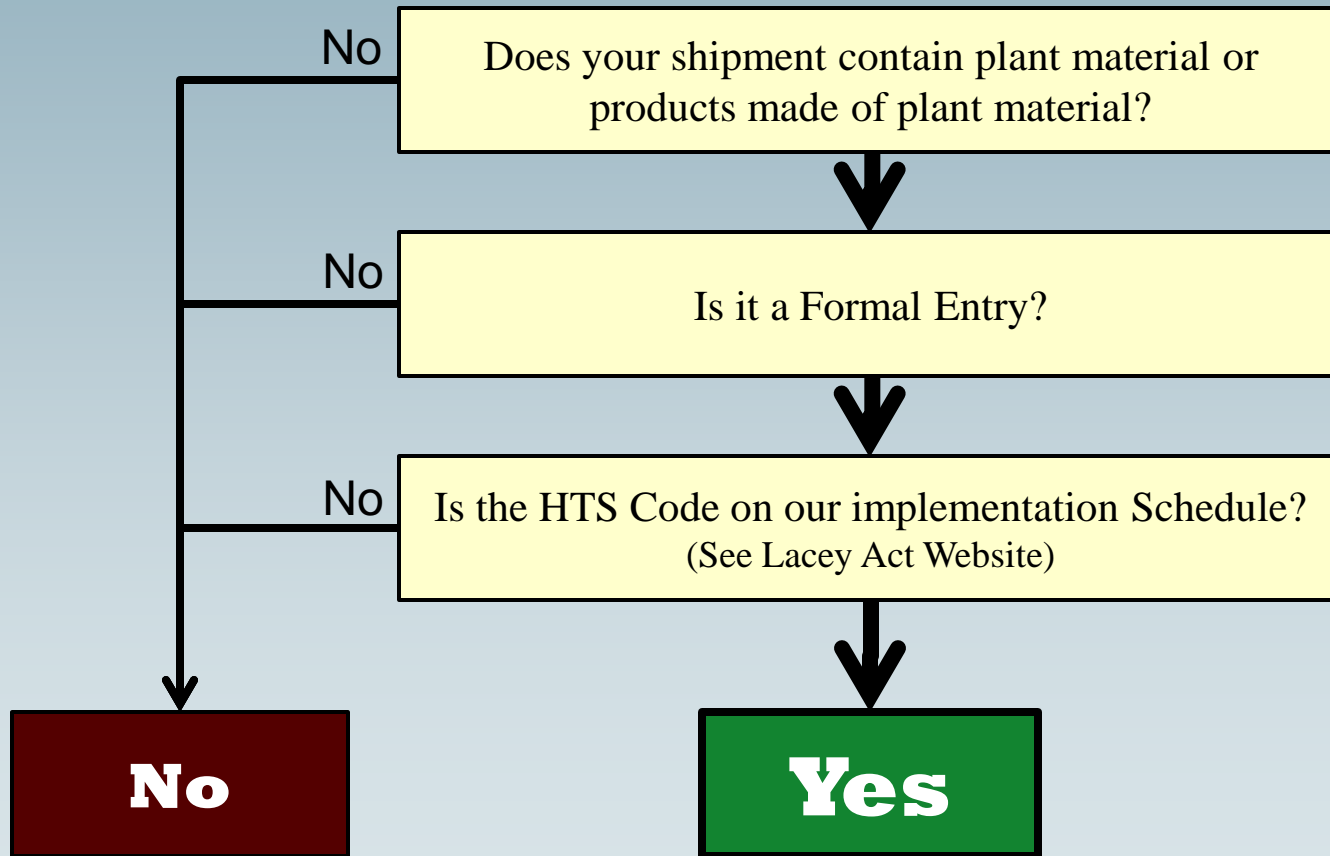
11. HTSUS NUMBER: (no dashes/symbols)	12. ENTERED VALUE:	13. ARTICLE/ COMPONENT OF ARTICLE	14. PLANT SCIENTIFIC NAME: <u>Genus</u> <u>Species</u>		15. COUNTRY OF HARVEST:	16. QUANTITY OF PLANT MATERIAL:	17. UNIT: ▼	18. PERCENT RECYCLED:
							▼	
							▼	
							▼	
							▼	
							▼	

I certify under penalty of perjury that, to the best of my knowledge and belief, the information furnished is true and correct.

Preparer's Phone Number and Area Code	Signature	Type or Print Name	Date

Knowingly making a false statement in this Declaration for Importation may subject the declarant to criminal penalties in accordance with 16 U.S.C. 3373(d).

Does my shipment require a Lacey Act Declaration?



PHASE-IN SCHEDULE OF ENFORCEMENT OF THE DECLARATION REQUIREMENT FOR GOODS OF, OR CONTAINING, PLANTS OR PLANT PRODUCTS*

Phase II April 1, 2009	Phase III October 1, 2009	Phase IV April 1, 2010
<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood & articles of wood)</p> <ul style="list-style-type: none"> • 4401—(Fuel wood) • 4403—(Wood in the rough) • 4404—Hoopwood; poles, piles, stakes) • 4406—Railway or tramway sleepers) • 4407—(Wood sawn or chipped lengthwise) • 4408—(Sheets for veneering) • 4409—(Wood continuously shaped) • 4417—(Tools, tool handles, broom handles) • 4418—(Builders' joinery and carpentry of wood). 	<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood & articles of wood)</p> <ul style="list-style-type: none"> • 4402—Wood charcoal • 4412—Plywood, veneered panels <ul style="list-style-type: none"> ○ except 44129906 and 44129957 • 4414—Wooden frames • 4419—Tableware & kitchenware of wood • 4420—Wood marquetry, caskets, statuettes. <p align="center">PLUS PHASE II</p>	<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood & articles of wood)</p> <ul style="list-style-type: none"> • 4421—Other articles of wood <p>Ch. 66 Headings (umbrellas, walking sticks, riding crops)</p> <ul style="list-style-type: none"> • 6602—Walking sticks, whips, crops <p>Ch. 82 Headings (tools, implements)</p> <ul style="list-style-type: none"> • 8201—Hand tools <p>Ch. 92 Headings (musical instruments)</p> <ul style="list-style-type: none"> • 9201—Pianos • 9202—Other stringed instruments <p>Ch. 93 Headings (arms and ammunition)</p> <ul style="list-style-type: none"> • 9302—Revolvers and pistols • 93051020—Parts and accessories for re-volvers and pistols <p>Ch. 94 Headings (furniture, etc.)</p> <ul style="list-style-type: none"> • 940169—Seats with wood frames <p>Ch. 95 Headings (toys, games, & sporting equipment)</p> <ul style="list-style-type: none"> • 950420—Articles and accessories for billiards <p>Ch. 97 Headings (works of art)</p> <ul style="list-style-type: none"> • 9703—Sculptures <p align="center">PLUS PHASES II & III.</p>

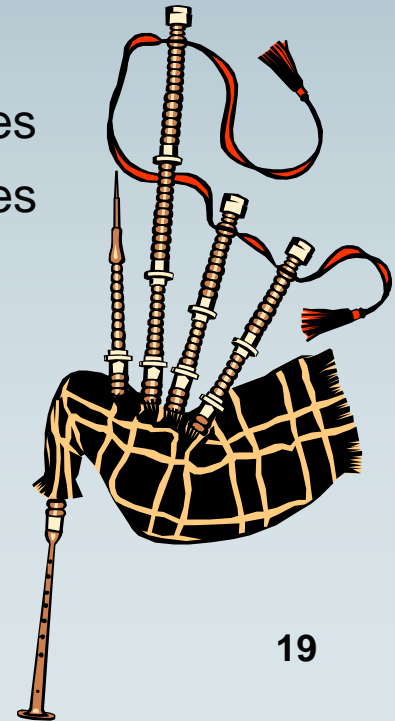
* Declaration requirements were effective as of December 15, 2008. All declarations submitted must be accurate; false statements may be referred for enforcement. Failure to submit a declaration will not be prosecuted, and customs clearance will not be denied for lack of a declaration until after the phase-in date above.

Legality Requirement



Declaration Requirement

- Example: Bagpipes with wooden pipes
 - HTS Section 92059020 – no declaration required
 - The Lacey Act itself still applies to the wooden pipes
 - If the pipes were made from illegally harvested trees then the bagpipe shipment is in violation of the Lacey Act



Exemptions from the Declaration Requirement

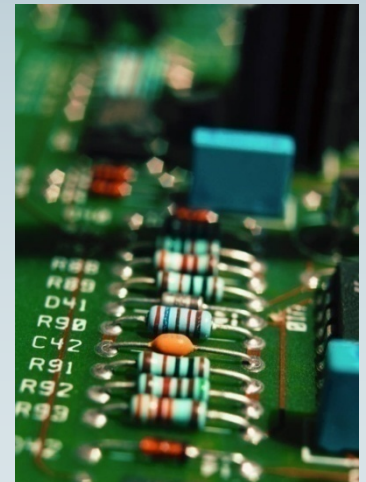
- Plants and plant products used exclusively as packing material to support, protect, or carry another item including (but not limited to):
 - Instruction manuals, labels, pallets and crating, etc.
- “Common cultivars” and “common food crops”
 - See 7 CFR 357.2 for full definitions.
- Plants for planting

Paper Declarations – How to?

- Download the PDF PPQ505 from the APHIS site
 - Save it to your computer hard drive
- Read the instructions
 - Pages 2 and 3
- Filling out the Declaration
 - Print out the PDF and fill the form by hand,
-OR-
– Fill in the PDF form using Acrobat, then print it out.
- Send copy with shipment/documentation for CBP
- Mail original to APHIS (with Entry number)

Electronic Declarations

- Electronic Declarations
 - **Are** currently submitted directly to USCBP via ABI
 - **Require** re-programming of the broker software
 - **Have** a very specific dataset and formatting requirements
- Electronic Declarations are **NOT** made:
 - via PDF
 - Via email
- LAWGS is in development
 - Web-based Paper Alternative



Electronic Declarations Dataset Requirements

- Introducing the CATAIR*
- See the CBP website:
http://www.cbp.gov/xp/cgov/trade/automated/automated_systems/abi/catair/user_requirements.xml
- PGA Datasets

*Contact your Customs Client Representative for any questions regarding the CATAIR



SECTION 1 - Shipment Information

1. ESTIMATED DATE OF ARRIVAL: (MM/DD/YYYY) 03/03/2011
2. ENTRY NUMBER: ENT-0000000-0
3. CONTAINER NUMBER: <input type="checkbox"/> See Attachment CONT0000000, CONT0000001
4. BILL OF LADING: BOL1234567890
5. MID: MID123MID1234MID

Plant and Plant Product Declaration Form

Section 3: Lacey Act Amendment (16 U.S.C. 3372)



U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

10. DESCRIPTION OF MERCHANDISE: 200 Solid Wood Full-sized Chairs and 300 Solid Wood Children's chairs
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6. IMPORTER NAME: Importing Imports Inc.
7. IMPORTER ADDRESS: 123 Importer St. Laurel, MD 20708
8. CONSIGNEE NAME: Consignee Co.
9. CONSIGNEE ADDRESS: 1234 Consignee Rd. Riverdale, MD 20737

SECTION 2 - Compliance with Lacey Act Requirements (16 U.S.C. 3372(f))

For each article or component of an article, provide the following:								
11. HTSUS NUMBER: (no dashes/symbols)	12. ENTERED VALUE:	13. ARTICLE/ COMPONENT OF ARTICLE	14. PLANT SCIENTIFIC NAME: <u>Genus</u> <u>Species</u>		15. COUNTRY OF HARVEST:	16. QUANTITY OF PLANT MATERIAL:	17. UNIT:	18. PERCENT RECYCLED:
9 4 0 1 6 9 2 0 1 0	12,000	Bentwood Seats Made of Oak	Quercus	rubra	US	4.23	m ³	0
9 4 0 1 6 9 2 0 1 0	0	Bentwood Seats Made of Oak	Quercus	alba	CA	2.55	m ³	0
9 4 0 1 6 9 2 0 8 0	15,000	Children's Maple Seat 15" tall	Acer	saccharum	MX	34.6	kg	0
9 4 0 1 6 9 2 0 8 0	0	Children's Maple Seat 15" tall	Acer	saccharum	US	25.34	kg	0
9 4 0 1 6 9 2 0 8 0	0	Children's Maple Seat 15" tall	Acer	saccharum	CA	53.7	kg	0

I certify under penalty of perjury that, to the best of my knowledge and belief, the information furnished is true and correct:

(999) 999-9999 Preparer's Phone Number and Area Code	<i>Johnny Importer</i> Signature	Johnny Q. Importer Type or Print Name	03/01/2011 Date
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Knowingly making a false statement in this Declaration for Importation may subject the declarant to criminal penalties in accordance with 16 U.S.C. 3373(d).

Simplifying the Process

www.aphis.usda.gov/plant_health/lacey_act/

- Implementation Schedule, Definitions, FAQ's
- Website Species Database
- Streamlined Submission Process
- *“Special Use Designations”*





Current Special Use Designations

Circumstance	Genus Designation	Species Designation
1. <u>Species groupings</u>¹		
SPF	Special	SPF
2. <u>Composite, Recycled, or Reused Plant Materials</u>²		
MDF, HDF, OSB, Particle Board, Paper, Paperboard, etc.	Special	Composite
Recycled Material	Special	Recycled
Reclaimed or Reused Material	Special	Reclaimed
3. <u>Other Special Cases</u>³		
Manufactured Prior to May 22, 2008 - Sourcing of Pre-Amendment Materials Untraceable Despite Due Diligence	Special	PreAmendment
No Plant Material Present	Special	None

Species Groupings

Currently Accepted Species Groupings Designations

- “Special SPF” – Listed species of Spruce Pine and Fir
 - For streamlined reporting only.
 - Does not remove the obligation to know actual species imported.

Request Process for New Species Groupings

- See Lacey Act Website for full instructions.
 - www.aphis.usda.gov/plant_health/lacey_act
- Submit to Lacey.Act.Declaration@aphis.usda.gov
 - Subject Line: “Request for Approval of New Species Grouping.”

Introducing



The Lacey Act Web Governance System

Proposed Launch Winter 2013

LAWGS Features

- Electronic Web Portal accessible anywhere
- Secure - Organization-specific access restrictions
- Submit Lacey Act Declaration PPQ Form 505 Instantly
- Eliminate “Lost in the Mail” or “Returned to Sender”
- Save templates for repeated similar shipments
- Track your submissions
- Step-by-Step Guidance while you File
- Dropdown fields to simplify the declaration process
- Eliminate worries over the spelling of Scientific Names

APHIS Lacey Act Website

- http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml

USDA United States Department of Agriculture
Animal and Plant Health Inspection Service

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Plant Health

Lacey Act

 The Lacey Act combats trafficking in “illegal” wildlife, fish, and plants. The 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008), effective May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products. The Lacey Act now, among other things, makes it unlawful, beginning December 15, 2008, to import certain plants and plant products without an import declaration. This page will serve as a clearinghouse for all information related to the implementation of the Lacey Act declaration requirement and will be updated promptly as new information becomes available.

Related Topics

- [Overview](#)
- [Plant Pest Program Information](#)
- [Pest Detection](#)
- [Pest Identification](#)
- [Plant Import and Export](#)
- [Permits](#)
- [Crop Biosecurity and Emergency Response](#)
- [Spotlights for PPQ](#)

Please refer Lacey Act inquiries to:



lacey.act.declaration@aphis.usda.gov