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Impact of the Amended US Lacey Act on FLEG(T)

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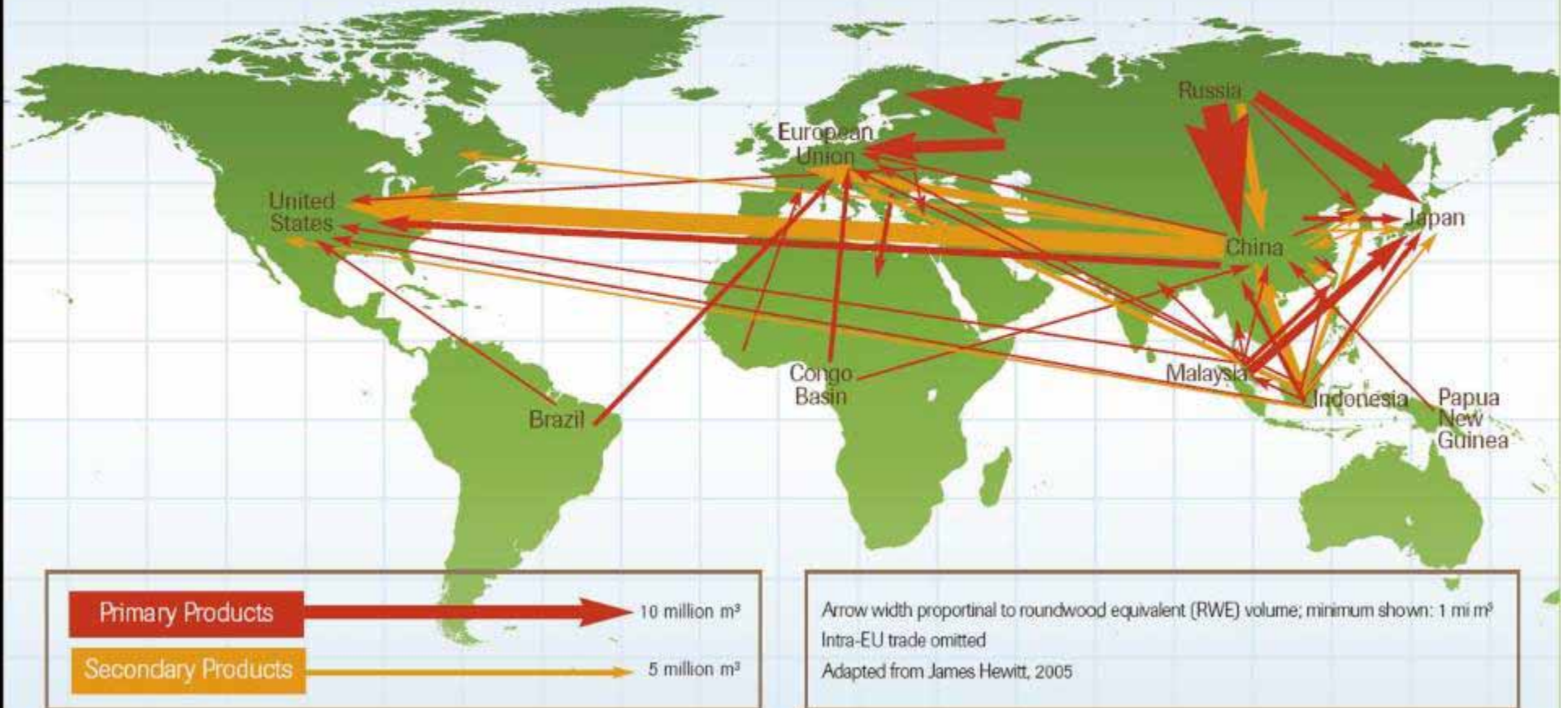
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The World Resources Institute

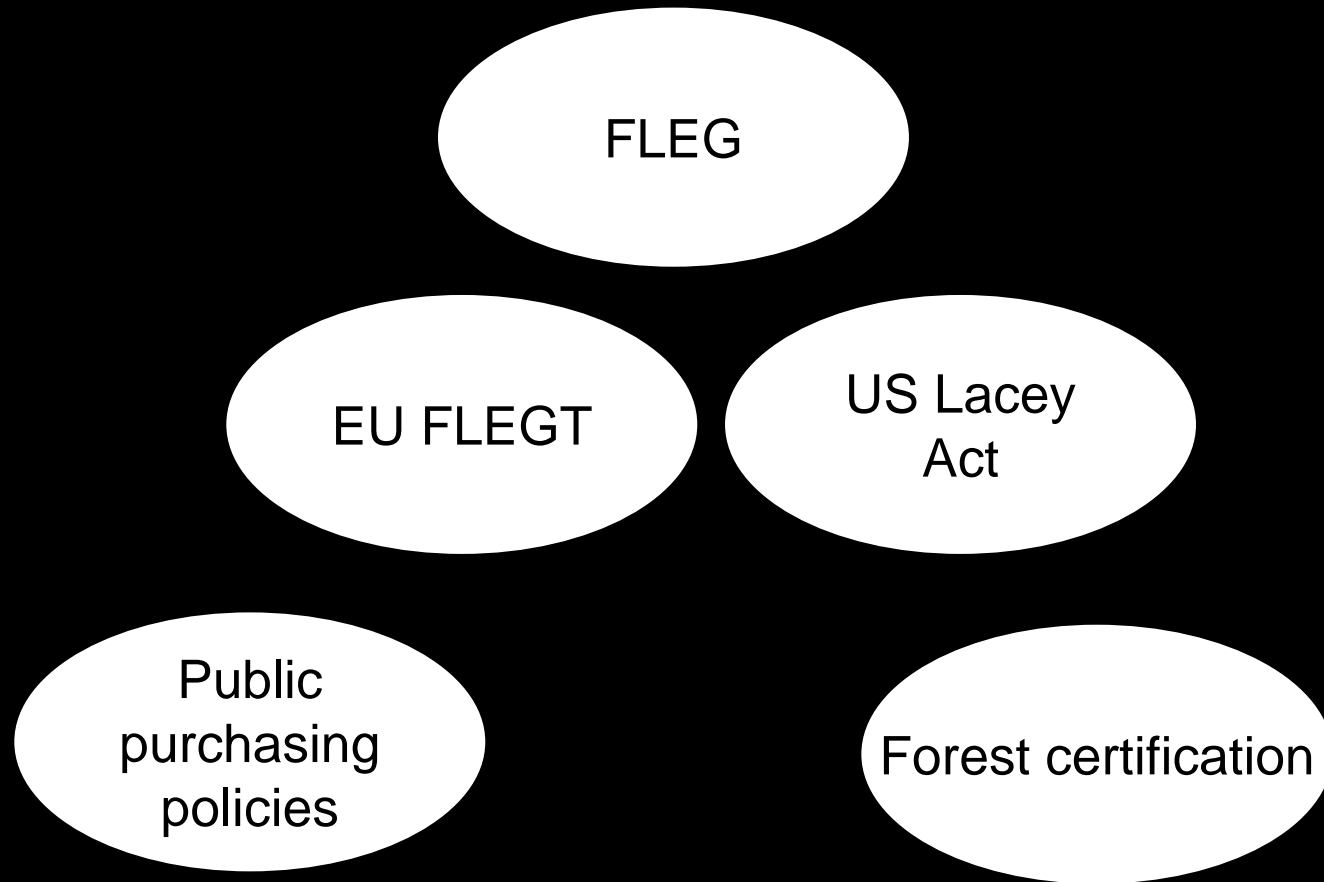
- An environmental policy research institute
- Independent, non-profit, non-advocacy
- Founded in 1982 in Washington, DC, USA
- Approx. 140 staff
- Works on
 - ◆ People and ecosystems
 - ◆ Institutions and governance
 - ◆ Sustainable business
 - ◆ Climate

High-Risk Forest Products Trade



Source: The Nature Conservancy

Responses to Poor Management



**And now for something
completely different ...**

The Lacey Act: What Is It?

- A groundbreaking law banning commerce in illegally sourced plants and their products – including timber and wood products.
- An amendment to a 100-year-old statute on wildlife crime, named the Lacey Act after the Congressman who first championed it.
- Adopted by the U.S. Congress on May 22, 2008 and in effect since that date.

The Lacey Act: Why is it Important?

- Acknowledges and supports other countries' efforts to govern their own natural resources.
- Puts in place powerful incentives for companies trading in these commodities to do the same.
- Sets a precedent for the global trade in plants and plant products.

The Lacey Act: What Does it Do?

1. Prohibits all trade in plant and plant products (e.g., furniture, paper, or lumber) that are illegally sourced from any U.S. state or any foreign country.
2. Requires importers to declare the country of origin of harvest and species name of all plants contained in their products.
3. Establishes penalties for violation of the Act, including forfeiture of goods and vessels, fines and jail time.

The Lacey Act: What is a Plant?

What is considered a plant?

- Any part or derivative product of any wild member of the plant kingdom, including trees harvested from plantations.

Included

- All wood products, such as firewood, logs, wood chips, lumber, paper, books, furniture, tool handles, etc.
- Also wood-based chemicals and certain types of fabric.

The Lacey Act: What is NOT a Plant?

Exceptions

- Live trees or other live plants intended for replanting, unless they are listed on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Endangered Species Act (ESA) or a state endangered species list.
- Scientific specimens to be used only for research, unless they are listed on CITES, the ESA or a state endangered species list.
- Common food crops and cultivars, such as corn, cotton or cut flowers.

The Lacey Act: What is "illegal"?

1. Theft of plants;
2. Taking plants from an officially protected area, such as a park or reserve;
3. Taking plants from other types of "officially designated areas" that are recognized by a country's laws and regulations;
4. Taking plants without, or contrary to, the required authorization;
5. Failure to pay appropriate royalties, taxes or fees associated with the plant's harvest, transport or commerce; or
6. Violating laws governing export or trans-shipment, such as a log-export ban.

The Lacey Act: What must be Declared?

What?

- ☒ The scientific names of all species used,
- ☒ The country of harvest,
- ☒ The quantity and measure, and
- ☒ The value.

When, and for what products?

- April 1, 2009: wood and wood articles
- Late in 2009: pulp and paper products

The Lacey Act: Types of Violations

A. Trade in illegally sourced wood

- A company in California imports a shipment of wood flooring from country X, made from timber that had been harvested without valid permits in country Y where it was cut.
- A paper company uses pulp sourced from illegal logging practices and exports finished paper product to the United States.

B. False import declaration

- An exporter purposefully mislabels a shipment to the U.S. as less valuable species to avoid higher tariffs.
- A veneer importer does not identify the correct country (or potential countries) of harvest origin for the species used in his importation.

Types of Prosecution

	Knowingly	Unknowingly	
		Due care NOT exercised	Due care exercised
A. Trade in illegally sourced wood	<ul style="list-style-type: none"> • Criminal felony fine. * • Possible prison for up to five years. • Forfeiture of goods. 	<ul style="list-style-type: none"> • Criminal misdemeanor penalty ** • Possible prison for up to one year. or civil penalty fine up to \$10,000. • Forfeiture of goods. 	<ul style="list-style-type: none"> • Forfeiture of goods.
B. False import declaration	<ul style="list-style-type: none"> • Criminal felony fine as above, or civil penalty up to \$10,000. • Possible prison for up to five years. • Forfeiture of goods. 	<ul style="list-style-type: none"> • Civil penalty fine of \$250. • Possible forfeiture of goods. 	<ul style="list-style-type: none"> • Civil penalty fine of \$250. • Possible forfeiture of goods.
<p>* Up to \$500,000 for corporation, \$250,000 for individual, or twice maximum gain/loss from transaction. ** Up to \$200,000 for corporation, \$100,000 for individual, or twice maximum gain/loss from transaction.</p>			

The Lacey Act: What is "Due Care"?

- A flexible concept that has been developed over time by the U.S. legal system.
- That degree of care at which a reasonably prudent person would exercise under the same or similar circumstances.
- It is applied differently to different categories of persons with varying degrees of knowledge and responsibility.
- Internal company policies and tracking procedures are a critical element. Steps may also include bar-code or other tracing systems; legality verification; certification under third-party schemes; stepwise programs offered by various organizations, and other innovative public-private partnership models.

The Lacey Act: When is it Effective?

- The Lacey Act provisions have been in effect since May 22nd, 2008.
- Importers of wood and wood articles will be required to provide declaration information beginning April 1st, 2009.
- Importers of paper will be required to provide declaration information beginning late in 2009.

The Lacey Act: Characteristics

- Importer innocent until proven guilty
- Effective since 22 May, no VPA needed
- Import declarations will be phased in
- Covers all forest products including paper
- Fact-based rather than document-based
- Exercising "due care" will reduce risk and penalties
- Stimulates private sector to supply legal products

For More Information

- www.aphis.usda.gov
- www.eia-global.org/lacey
- larsl@wri.org

Thank You