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UNITED STATES DEPARTMENT OF AGRICULTURE
IMPLEMENTATION OF REVISED LACEY ACT PROVISIONS

October 14, 2008`

1 MS. SMITH: Good Morning and welcome! I am
2 Cindy Smith, APHIS administrator, and I am very
3 excited to be here and am very pleased with the very
4 impressive turnout we have this morning, so we
5 appreciate you joining us.

6 We are here, as you know, to talk about
7 the new Lacey Act declaration requirements. Today
8 we hope to provide you with a clearer understanding
9 of the Lacey Act amendments and share our plans for
10 implementing and enforcing the new law's
11 requirements. We know you have questions about
12 these requirements, so we want to take this
13 opportunity to answer those questions and to provide
14 you with as much information as we can.

15 The Lacey Act is designed to combat
16 illegal trafficking in wildlife, fish or plants. As
17 you know, Congress amended the Act this spring
18 through the 2008 Farm Bill. The amendment expanded
19 the Act's protection to a broader range of plants
20 and plant products including timber derived from
21 illegally harvested plants. The amended Act also
22 requires a declaration for the importation of any

1 covered plant or plant product.

2 As amended, the Lacey Act is an important
3 new tool to help the United States combat illegal
4 logging. Illegal logging has many harmful
5 consequences. It robs countries of their resources,
6 destroys forests and habitat, and depresses global
7 timber prices. At the same time, we recognize that
8 new amendments place an additional burden on the
9 regulating community. There are multiple agencies
10 involved in implementing and enforcing the Lacey
11 Act. Consequently, we formed an interagency group
12 to address the new legislative requirements. That
13 group has been working hard to develop a reasonable
14 feasible implementation plan that will allow us to
15 enforce the law without unduly burdening importers.
16 My agency, USDA's Animal and Plant Health Inspection
17 Service, has the lead in this effort. The
18 Department of Homeland Security's Customs and Border
19 Protection will be helping us to collect the data
20 required by the statute. The Department of Justice
21 and the Department of Interior's U.S. Fish and
22 Wildlife Service, have provided assistance with

1 issues related to enforcement of the Act. Also
2 involved are the USDA's Forest Service, the Office
3 of the U.S. Trade Representative and the Department
4 of State. I would also like to thank the Council on
5 Environmental Quality which has played a critical
6 role in coordinating all of the agencies involved.
7 This has truly been a collaborative interagency
8 effort and I appreciate all the good work the group
9 has done.

10 I am also pleased that many
11 representatives of the involved agencies are able to
12 join us today on our panel. Based on our group's
13 work, we are proposing a plan for a phased-in
14 enforcement of the declaration requirement. The
15 phase-in plan will enable us to meet the declaration
16 requirement of the statute while giving both you,
17 the importers, and us, the regulators, time to make
18 necessary adjustments. You will hear more about the
19 phase-in plan shortly and have the opportunity to
20 ask questions of our panelists. The plan was also
21 published in the Federal Register on October the 8th
22 and we are taking public comment on the plan. If

1 you would like to provide us with comments on the
2 proposed phase-in plan, you can do so through the
3 federal rule-making website at www.regulations.gov.

4 We realize that a very important part of
5 the transition is informing you, our stakeholders,
6 about the new requirements and keeping you
7 up-to-date on the changes as we move forward. That
8 is why we are holding this meeting today and
9 planning additional meetings to be held this winter.
10 These meetings are just a part of the extensive
11 national and international outreach we are
12 undertaking. We have already provided a variety of
13 resources about the new Lacey Act requirements on
14 the APHIS website and will continue to update that
15 site.

16 I also want to mention that you can sign
17 up to receive e-mail updates on our Lacey Act
18 efforts through our stakeholder registry. You can
19 sign up on the Lacey Act page of the APHIS website
20 for this.

21 Again, I appreciate all of you being here
22 today. We want to make this transition as smooth

1 and painless as possible and that will require a
2 cooperative effort by all of us.

3 Now, I'd like to introduce Matt Rhoads and
4 Cathy Saucedo, who will be presenting an overview of
5 the new provisions and information on implementation
6 of the declaration requirements. Matt is the
7 Director of Plant Protection and Quarantine
8 Programs, Planning, Analysis and Regulatory
9 Coordination staff and Cathy is the director of the
10 Customs and Border Protection's Import Safety and
11 Interagency Requirements Staff. I believe Matt is
12 going to start us off. Thank you.

13 MR. RHOADS: Thank you, Cindy. Thank you
14 all for your interest in this issue. The intent of
15 today's meeting, as Cindy noted, is to share our
16 plans, our current plans, for the next several
17 months regarding implementation of the amended Lacey
18 Act provisions. We will focus much of the
19 discussion today on the new declaration requirement
20 for plants and plant products.

21 We recognize that there are many questions
22 and concerns out there regarding this subject and,

1 while we won't be able to answer all questions today
2 I'm sure, our intent is to clarify as many points on
3 this issue as possible at this time.

4 In this short presentation, I will just
5 give a little bit of background on the Lacey Act and
6 describe the changes and new requirements
7 implemented as part of the Farm Bill of 2008
8 provisions to the Lacey Act, describe some of the
9 commodities and products which may be covered under
10 these revisions, and discuss a little bit about
11 potential violations, at which point I will turn it
12 over to Cathy Saucedo Customs and Border Protection
13 to describe our current plan for implementation.
14 And then we will open it up to you all to ask
15 questions.

16 The Lacey Act is the nation's oldest
17 wildlife protection statute, first enacted in 1900
18 to combat the impact of hunting to supply commercial
19 markets, the interstate shipment of unlawfully
20 killed game, and the introduction of harmful exotic
21 species and killing of birds for the feather trade.
22 The Lacey Act was significantly amended in 1981, in

1 1988, and now again in 2008. The Lacey Act is a
2 critical tool to combat trafficking in illegal
3 wildlife, fish, or plants.

4 As you know, the Food Conservation and
5 Energy Act of 2008, also known as the 2008 Farm
6 Bill, amended the Lacey Act to provide protection to
7 a broader range of plants, it extends the statute's
8 reach to encompass products including timber that is
9 derived from illegally harvested plants and plant
10 products. It also includes a new declaration
11 requirement relating to plant products. The Farm
12 Bill was passed on May 22nd of 2008 and was
13 effective immediately.

14 The Lacey Act, as amended, is an important
15 new tool that will help the United States to support
16 the efforts of other countries and its own states to
17 combat illegal logging. Critically, the Lacey Act
18 now makes it unlawful to import, export, transport,
19 sell, receive, acquire, or purchase in interstate or
20 foreign commerce any plant, and I'll define that
21 term in a second, with some limited exceptions,
22 taken or traded in violation of the laws of the a

1 United States state, or most foreign laws. The
2 Lacey Act also makes it unlawful to make or submit
3 any false record, account, or label for or any false
4 identification of any plant. It will also be
5 unlawful, as of December 15th, to import any covered
6 plant or plant product without a declaration.

7 It is important to make the distinction
8 between the requirements in yellow above and the
9 requirement below in gray. The provisions described
10 in yellow text have been enforced since May 22nd.
11 That is, the provisions are enforceable now and
12 violators of those provisions can be prosecuted now.
13 However, the declaration requirement is a separate
14 requirement and is effective by statute on
15 December 15th; however, as indicated in our Federal
16 Register notice published last Wednesday, we do not
17 intend to begin enforcing that declaration
18 requirement until April 1st of 2009 and, even then,
19 on a phased-in schedule. More on that later.

20 Why fight illegal logging? Illegal
21 logging robs countries, impoverishes forest
22 communities, depresses global timber prices and puts

1 money in the pockets of criminals. It undermines
2 the rule of law and sustainable forest management,
3 destroying forests, watersheds and habitat. It
4 unfairly competes with legal production and trade
5 and profits from illegal logging have been used to
6 fuel conflict and purchase arms. Some examples of
7 illegal logging include theft of timber, including
8 from parks and protected areas, harvesting of timber
9 and plants without permission. Failure to comply
10 with harvesting regulations is another example, as
11 well as failure to pay royalties, taxes, and fees.
12 The Lacey Act provides the legal authority to take
13 action when products associated with the illegal
14 logging enter the United States, as well as for
15 products that are moved domestically within the
16 United States.

17 The new declaration requirement related to
18 plant products, under the statute, under the Lacey
19 Act revisions, the declaration must be made at the
20 time of the importation. The declaration must
21 include the scientific name of the plant, which
22 would include the genus and species identification.

1 It would also include the value of the importation.
2 It must include the quantity of the plant and the
3 name of the country in which the plant was
4 harvested. For paper and paperboard products with
5 recycled content, we will also require, the statute
6 also requires, that declarants state the average
7 percentage of recycled content without regard for
8 species or country of harvest. The declaration
9 requirement currently does not apply to packing
10 material. So, anything used to support, protect, or
11 carry another item is exempt from the declaration
12 requirement, unless the actual importation focuses
13 on packing material.

14 The definition of plant. We use the term
15 plant and plant product sort of, the statute uses
16 the term plant as the centerpiece for the
17 declaration requirement and it is important to note
18 that, according to the statute, a plant means any
19 wild member of the plant kingdom including roots,
20 seeds, parts or products thereof, and trees from
21 either natural or planted forest stands. So, the
22 scope of the Act potentially is broad.

1 When making a declaration what if
2 information is unknown? The Act provides that if
3 species varies and is unknown, that the declarants
4 provide the name of each species that may have been
5 used to produce the product. If the species is
6 commonly harvested in more than one country and the
7 country is unknown, the declarants are required to
8 list the name of each country from which the plant
9 may have been harvested. These are the provisions
10 of the Act itself. The Act itself provides for no
11 de minimis listing.

12 Exclusions from these declaration
13 requirements. Specifically, and again this is
14 exclusions to the declaration requirement,
15 importations of common cultivars are exempted, as
16 well as importations of common food crops. These
17 terms have yet to be defined, but the USDA APHIS is
18 working with the Fish and Wildlife Service and the
19 interagency group to define these terms. We intend
20 to publish a regulation prior to the formal
21 implementation of any of the declaration
22 requirement, any of the stages of the declaration

1 requirement phase-in, so that it is clear from the
2 beginning which products will be exempted under
3 those specific exemptions. The Act also exempts
4 scientific specimens for research and also exempts
5 plants to remain planted or be replanted. So, live
6 plants, except that in a case where the subject of
7 an importation is a live plant. If the plant is
8 listed in the Convention on International Trade of
9 Endangered Species of Wild Fauna and Flora, is
10 listed under the Endangered Species Act of 1973, or
11 any state law that provides for the conservation of
12 species. But again, common cultivars and common
13 food crops are, in general, exempted from the
14 declaration provisions.

15 As I said, the scope of the Act is broad.
16 Potentially covered products could include lumber,
17 wood pulp, paper and paperboard, furniture, printed
18 matter, musical instruments, to the extent that they
19 contain plant products that meet the definition of a
20 plant, arguably some pharmaceuticals, boats, all
21 matter of products that could contain plant parts.
22 Now, we are working with the interagency group, as

1 well as Congress, to clarify the intent of Congress
2 in terms of what articles will ultimately be -- as
3 we see, some of these products get further and
4 further away from the forest. We recognize that the
5 intent of the Act is to address critical illegal
6 logging efforts. And we want to be as practical and
7 pragmatic about implementing the statute as possible
8 and we are working to clarify precisely how we will
9 implement, or if we will implement, a declaration
10 requirement for some of these latter, further from
11 the forest, products.

12 Today you were provided, when you walked
13 in, a draft declaration form. We suspect that the
14 vast majority of users will never use that paper
15 declaration form, but we are making it available to
16 you so that you can better understand precisely how
17 the information will be entered into an electronic
18 system, when an electronic system becomes available.
19 We will be making that paper form available formally
20 for public comment in compliance with the Paperwork
21 Reduction Act. We expect to have that out sometime
22 in November for public comment. So, this copy is

1 provided for your convenience and reference, but
2 there will be a formal opportunity to comment on
3 this based on another Federal Register publication
4 in the coming month.

5 On the subject of violations, the Lacey
6 Act provides for both civil and criminal penalties
7 for failure to comply with its provisions.
8 Regardless of the civil or criminal prosecution, the
9 unlawful plants or products are subject to seizure
10 and forfeiture. Forfeiture of vehicles and
11 equipment is authorized in cases of criminal
12 convictions.

13 Now, as Cindy Smith, Administrator Smith,
14 offered before, there have been a number of agencies
15 involved in getting us to where we are with
16 implementation of these provisions including APHIS
17 USDA, which has taken a leading role and is
18 ultimately responsible for publishing regulations to
19 clarify some of the provisions of this Act. We have
20 also been working closely with Customs and Border
21 Protection, the USDA's Forest Service, USTR, the
22 Department of Justice, Department of State,

1 Commerce, USAID, U.S. International Trade Commission
2 and others, and critically the Import Safety and
3 Interagency Requirements Division of the Office of
4 International Trade of CBP is designated as the lead
5 for Customs and Border Protection. With that, I am
6 going to turn the mic over to Cathy Saucedo to
7 describe a little bit more how we plan to go about
8 the implementation of this Act.

9 MS. SAUCEDA: Thanks all of you for
10 coming. Before I get a little bit into the status
11 of implementation and the phase-in, I just want to
12 give you a little bit of the background of CBP's
13 role in the implementation.

14 It is not CBP's role to make a
15 determination as to what's a common cultivar or
16 common food crop. That role belongs rightly with
17 the Department of Interior and USDA. There are
18 certain other roles that we do not have as far as
19 criminal enforcement, etc. which is the bailiwick of
20 the Department of Justice. But CBP is pretty good
21 at implementing stuff for goods that cross our
22 international borders. Most of you all, or maybe a

1 good half of you all, I've seen in the last six
2 weeks to eight weeks as we tried to work through
3 Lacey Act implementation and how it impacts the
4 cargo that is being entered. CBP, I am certain we
5 learned this the hard way, it seems like we always
6 learn things the hard way, but we implemented the 24
7 Hour Rule and the Trade Act of 2000. Many of you
8 were on board when we implemented the Bioterrorism
9 Act, when everyone thought they'd have to be
10 entering all this information into a separate
11 standalone system. We did wood packaging, we did
12 that with the USDA, and all of these I have to say
13 were quite successful. We worked with you all, we
14 worked with our COAC, our Commercial Operations
15 advisory board, with the National Customs Brokers
16 and Freight Forwarders, Association, AEEI, and many
17 of you all that are here that I don't have time to
18 name right now, to develop a program that would meet
19 the needs of the legislation, but also be able to
20 meet the needs of the clearance of cargo and CBP's
21 areas of interest.

22 So, this is what we did this time. The

1 interagency group has worked, Matt and Bill and I,
2 we've met with you all and we recognized that on
3 December 15th, we all weren't going to drop dead nor
4 were we going to turn into pumpkins, but obviously
5 this is a piece of legislation that people have
6 fought for for a long time, so certainly we have to
7 take it and are taking it very seriously.

8 So, of course the first interest of ours
9 was to delay the requirement of the submission of a
10 paper form. I think anybody that's involved with
11 customs matters, they hear the word paper form and
12 chills run up their spine. Anybody that's involved
13 with the trade support network and ITDS recognize
14 that that is one of the main things that we are
15 trying to do with our new automated system is to
16 eliminate paper forms, so we can facilitate the
17 cross-border movement of goods. So, this is kind of
18 what got us all involved, kind of got us focusing
19 and I think that is what got you all focusing was
20 the thought of a paper form.

21 So, bringing you up to speed this is where
22 we are today. We were kind of laughing, those in

1 the interagency group, to think that eight weeks
2 ago, six weeks ago, that we could be making this
3 presentation before you, having worked extensively
4 with Congress and other members of the trade, to get
5 where we are.

6 So, moving on with the graphics. Of
7 course, May 22nd, that's the effective date of the
8 requirements as far as enforcement is concerned.
9 The statute requires that December 15th that we will
10 require a declaration, a paper declaration and, of
11 course, in case you all missed all of this, that is
12 really not going to happen on December 15th, so
13 don't be scared. We are working to develop an
14 automated system for this paper document. I believe
15 you will see in our phase-in, once we get the
16 automated system up and running, then we will
17 actually start requiring the information that we are
18 asking for that you can see on the plant
19 declaration. We are defining common cultivar and
20 we, I am using the interagency working group
21 meaning, common cultivar and common food crop, and
22 this is probably the first of many organized

1 outreaches that we are going to be undertaking
2 before we implement the provisions of the Act.

3 This is our phase-in plan, or at least the
4 start of it. We have actually addressed it, to some
5 extent, on a few webinars. We have addressed it
6 with members of Congress and other organizations and
7 then, of course, it was published in the Federal
8 Register last week. This is the phase-in and these
9 are the first few phases of implementation. As Matt
10 said, this is a strongman draft of where we're
11 headed. This is open for comment and in fact we've
12 already gotten some written comments before this
13 program that will need to be considered in the
14 implementation. But the main thing that we wanted
15 to make first crack at out of the box is we're not
16 going to begin any enforcement of the paper
17 declaration at least until April 1st of 2009. And
18 then that April 1st could be delayed to some point
19 depending on our automation. But obviously if
20 automation takes several more months after that, we
21 will have to reconsider the no requirement for
22 papers. So, we've got our fingers crossed that

1 around April 1st we will be able to submit the
2 declaration information through CBP's automated
3 system and that information will be fed over to USDA
4 and they will do what they need to do to analyze,
5 produce reports, or whatever it is that they may do
6 with the information. And what we try to do, of
7 course, is we try to put into the phase-in program
8 items that were clearly covered by the Act, the ones
9 that would be the easiest for the trade to know. If
10 you see, phase two which is starting at the
11 beginning, April 1st, we've got chapter six items
12 and then we have wood items in Chapter 44. And we
13 thought that while we are working with NGOs and
14 other traders, and Congress and the interagency
15 working group, where we are clarifying what is
16 actually covered when you start dealing with
17 composite goods or you start dealing with certain
18 extracts that come from trees, we would move them
19 farther out in the phase-in schedule so that
20 hopefully we will have the answers to those. We are
21 talking about the rayons and the cottons and all the
22 things that I know that the textile industry is

1 shivering as we speak. But that is the purpose of
2 the phase-in, is to go with the most acceptable,
3 common items and then move into the more complicated
4 items throughout the phase-in.

5 Obviously, at some point we will end up
6 with full implementation and I don't know that, as I
7 stand here today, I don't know that I know exactly
8 what full implementation is. Certainly, as Matt
9 mentioned, there's no de minimis. What are we going
10 to do with personal shipments, what are we going to
11 do with international mail, there's a lot of issues
12 that are unanswered. We are looking for your
13 comments. We are looking for direction from
14 Congress and others as to how they believe that this
15 Act should be implemented. But ultimately, it will
16 rest with the USDA and the interagency working group
17 and I am certain that Matt says that we are going to
18 have another meeting sometime in winter and we will
19 have a lot more answers at that time. And probably
20 be posting answers to the USDA website under their
21 questions and answers, as we come to grips with some
22 of these more complicated issues.

1 So, having said that -- once again, I do
2 appreciate all the involvement that you have had.
3 It has been pretty remarkable to see a lot of folks
4 step up to the plate and really step forward to help
5 us with the implementation of these provisions.

6 So, having said that, I am going to turn
7 it back over to Matt and we'll move from here.
8 Thank you, Matt.

9 MR. RHOADES: Thank you, Cathy. I wanted
10 to note, too, given that there are still some plans
11 developing and additional information regarding
12 implementation is expected to change over time, I
13 really want to point to our web page as a critical
14 source of information, of the most current
15 information regarding Lacey Act implementation. We
16 want to encourage folks who are interested in
17 ongoing developments related to this issue to
18 register with us, to use our stakeholder registry,
19 so that we can get out to you the most current
20 information via email as it becomes available. You
21 can sign up for our stakeholder registry from the
22 web link provided here on this slide.

1 At this point, I would like to take a few
2 moments to introduce the rest of our panel that will
3 be taking your questions. You've already heard from
4 Cathy Saucedo and next to Cathy is Bill Thomas, who
5 is the Associate Executive Director for Plant Health
6 Programs in APHIS. Next to Bill is Michael Guzman,
7 who is the Principal Deputy Assistant Attorney
8 General for Environment and Natural Resources from
9 the Department of Justice. And next to Michael is
10 Neil Mendelson who is a Senior Special Agent for
11 Fish and Wildlife Office of Law Enforcement.

12 Regarding the Q and A session, we have one
13 microphone here. We'd ask that folks who are
14 interested in asking questions -- we intend this to
15 be simply a question and answer session. We
16 weren't -- we are not intending to receive testimony
17 this point. We encourage you all to submit written
18 comments on the Federal Register notice or via the
19 e-mail address provided on the APHIS website, but
20 ultimately we want to try and answer as many
21 questions as we can here today in the time that we
22 have available. The proceedings are being recorded,

1 so there will be a transcript of questions asked and
2 answers given, made available on the website as
3 well.

4 To head one question off at the pass, we
5 know one of the pressing issues is, will my product
6 need a declaration? At this point, given the stated
7 plans for phase-in, we can't answer at this point
8 which products precisely will or will not require a
9 declaration beyond what we call phase four of this
10 phase-in, you recall the phase-in schedule. You can
11 see up through, the phase-in schedule through
12 July 1st of 2009, approximate date, timing subject
13 to change. Presumably there could be additional
14 phase-ins beyond this. Of course, products listed
15 under the HTS chapters could require a declaration.
16 At this point, we are not prepared to describe
17 whether any product that may fall under additional
18 HTS code will not require a declaration, but we
19 wanted to bring you here to let you know that the
20 intend to make that as transparent and as timely a
21 process as is possible, so that industries and
22 importers and all who are required to submit these

1 declarations will have adequate notice to prepare to
2 get notice to your supply chains, etc. in the event
3 that your product does require a declaration.

4 With that, I will turn it over to you all
5 for questions and answers. If you're interested,
6 again, step up to the microphone and our panel
7 members will do our best to answer your questions.

8 MS. JAROSZ: Hello. My name is Shawn
9 Marie Jarosz. I am from the company called
10 TradeMoves. I am interested in learning a little
11 bit more about exclusions for common food crops,
12 when it's expected that Federal Register notice
13 would come out. You said its in the joint
14 rule-making process right now between APHIS and FWS
15 -- and just to learn more about how those
16 definitions are coming along and when we can provide
17 input. Thank you.

18 MR. THOMAS: I guess I can take that one.
19 We are working diligently with Fish and Wildlife
20 Service and we have a draft definition for both
21 common food crop and common cultivar and we will
22 need to give examples, of course. But our goal is

1 to have the rule published before the first
2 implementation date of April 1st. So, we are on a
3 pretty aggressive schedule to get that rule out.

4 Right now, I think we're considering it to
5 be an interim rule because of the urgency of getting
6 it published. So, it is moving along rather well.

7 MS. JAROSZ: And does that -- can you give
8 us any insight as to how broad you're looking at
9 common food crop right now? You know, I heard, I
10 think Cathy mentioned extracts and --

11 MR. THOMAS: If it is something that can
12 be consumed by human beings, I think we'll probably
13 have that included in food crops. Cultivars would
14 be things like cotton and tobacco, would certainly
15 be cultivars in my mind. But they are more examples
16 and the definitions would be -- the definitions
17 would be broad and we'll talk about what food really
18 is -- for instance, I don't think we will have
19 lumber in the food crops, even though termites eat
20 it. We will keep it as broad as we possibly can.

21 MS. JAROSZ: Thank you.

22 MS. LESTER: Hi. I am Stephanie Lester

1 with the Retail Industry Leaders Association. As
2 many of you know already, a group of importers and
3 the business community has been working with
4 Congress and other stakeholders, environmental NGOs,
5 and domestic producers, to talk about the
6 declaration requirement and see if we could come to
7 some common views on how that declaration
8 requirement might be phased in. I know
9 congressional staff has transmitted to you this
10 morning a letter from Congress, from the chief
11 proponents of the legislation and the chairman of
12 the relevant committees of jurisdiction, outlining a
13 much more measured implementation, phase-in
14 schedule, with six months between tranches and a
15 much narrower scope of products that would be
16 subject to the declaration in those tranches.

17 And I just want to say that we've been
18 working separately to write a letter of support for
19 that congressional letter, because we all have been
20 working in that process, and I have a letter from
21 outside groups, from the business community,
22 importers, retailers, environmental NGOs, and

1 domestic producers, strongly endorsing that approach
2 outlined by Congress.

3 And since you said that I have to have a
4 question, my question to you is what is the process
5 for us to get feedback, and the timing for feedback
6 on that proposal? But, before you answer that, I
7 want to turn it over to --

8 MR. VON BISMARCK: I have the same
9 question. And just the additional comment that,
10 from the environmental side, that we found it
11 extremely encouraging, this discussion has occurred
12 amongst the stakeholders over the last six weeks.
13 From our side, the coalition of over 30 groups
14 representing environmental, labor, and industry
15 concerns. We are very encouraged that the
16 overarching goal of finding pragmatic steps to deal
17 with what we consider to be one of the major
18 environmental challenges facing the globe today,
19 makes this potentially the most impactful
20 legislation in decades for global environmental
21 concerns, as well as developmental concerns. And we
22 are very encouraged by the pragmatic common ground

1 that we found with the larger importing community
2 and retail community over the last few weeks. And I
3 have the same question as Stephanie had.

4 MR. THOMAS: Well, in response to that, I
5 would say I after receiving the letter this morning,
6 my first comment from that was we have to get back
7 together with our interagency group as soon as
8 possible. And, to that end, I would think that that
9 will either occur this week or early next, at which
10 point we will have to develop a plan based around
11 what you are proposing in the letter. I have not
12 read the entire letter yet.

13 We certainly are open to suggestions and
14 that is the whole purpose of this meeting is to look
15 at what we proposed and to look for a common-sense
16 way of implementing it. It should be simple enough
17 for importers to follow, but also for CBP to enforce
18 and justice to use. So, it has to be something that
19 makes sense to a large number of folks in the
20 industries affected.

21 So, I would think that we could probably
22 get back for feedback from you toward the end of the

1 month to see what direction we are going. Our goal
2 here is to be as transparent as possible in how we
3 are handling the situation. That's why Matt brought
4 up the website. Any questions that we get here that
5 we can answer, we are certainly going to post to our
6 website, including our Q&A, so they don't have to be
7 repeated. But any comments coming from the people
8 here today, or the people who aren't here today, on
9 notice or any ideas around this, should be sent to
10 us so we can include that as we continue this
11 discussion and common sense solutions to implement
12 this Act.

13 MR. VON BISMARCK: Thank you. And I'm
14 sorry, I didn't identify myself. I am Alexander von
15 Bismarck from the Environmental Investigation
16 Agency. We are an NGO that investigates trade and
17 environmentally sensitive products and have been
18 part of the coalition that I referred to. Thank
19 you.

20 MS. LESTER: Thanks.

21 MR. THOMAS: Thank you both.

22 DR. MENCHEY: Good morning, I am

1 Keith Menchey with the National Cotton Council.
2 Matt, we talked last week and I know I've had to
3 call APHIS at least five different times in the past
4 four months as we get calls of concerns,
5 particularly from some of our textile manufacturers,
6 about these amendments and what this is going to
7 mean to cotton trade.

8 Up to this point, I felt pretty
9 comfortable that we were going to be exempted, but
10 then the second speaker included cotton in her list
11 of things we needed to decide upon. So, my question
12 this morning, just for the record, is there any way
13 that you could assure some of our members that
14 cotton, cotton products, and products derived from
15 cotton will be exempt from this Act?

16 MR. THOMAS: As we move forward in our
17 definition of common cultivars, I believe that
18 cotton would be included in that, as well as other
19 textile products. Since they're not eaten, we can't
20 put them in the food crop exception of course, but I
21 think our intent is to move cotton in that common
22 cultivar category. But frankly, until we have that

1 published, I can't give you anything in writing.

2 AUDIENCE MEMBER: Right. But that
3 question is going to be on the record, right?

4 MR. THOMAS: Right.

5 AUDIENCE MEMBER: That's what I needed.
6 Thank you.

7 JOHN BOYLE: Hello. My name is John Boyle
8 I'm from Scholastic, Incorporated. I am not going
9 to make any speeches. We have kind of a nuts and
10 bolts question.

11 First of all, we are a publisher so we are
12 a little bit concerned about -- obviously every book
13 is made entirely of plant products, but I see that
14 chapter 49 it is not on the initial list of things
15 to be implemented. But a nuts and bolts question is
16 how, when this form is electronically set-up, will
17 this be something that will be transmitted to
18 customs before arrival, upon arrival, is it
19 something that needs to be presented with the
20 paperwork when it is being cleared through customs?

21 MR. THOMAS: I think the rule, the actual
22 Act says on importation.

1 MR. BOYLE: Okay.

2 MR. THOMAS: So, that would be on arrival.
3 I would think it would have to be in the hands of
4 CBP.

5 MR. BOYLE: Okay. Thank you.

6 MR. BATSON: Good morning. Russ Batson
7 with American Home Furnishings Alliance. Another
8 nuts and bolts question, if you will. Declarations
9 of quantity, can those be in commercial units? For
10 example, seven desks of solid rubber wood?

11 MR. THOMAS: Give me that one more time.

12 MR. BATSON: The declaration of quantity,
13 can that be in the commercially meaningful unit, you
14 know, that the importer is going to have a grasp on?
15 As in a desk or a dining room set, or a --

16 MR. THOMAS: We are still struggling with
17 that question ourselves. We will certainly publish
18 something in advance of that. But right now,
19 especially with furniture, it is difficult. You
20 know lumber and logs its cubic meters or board feet
21 and that is fairly easy. For tables or component
22 furniture that may have different types of wood, the

1 quantity --

2 MR. BATSON: As well as engineered wood --

3 MR. THOMAS: Right.

4 MR. BATSON: -- like particle-board and so
5 on.

6 MR. THOMAS: We will get a definition of
7 the quantity needed on the form. Right now, we are
8 just going to keep it as a general quantity. It
9 would be one table on the top end, but then as you
10 go down and list, if you look at the declaration,
11 you will have options for putting a leg down that's
12 made of mahogany, and the tabletop is pine, and the
13 quantity of that might be something different.

14 MR. BATSON: Okay. Thank you.

15 AUDIENCE MEMBER: Good Morning. My name is
16 Veri Nochebeker (phonetic) on behalf of the Port of
17 Wilmington, Delaware which is a seaport. My
18 question is more practical. We are familiar with
19 labeling of fruit products, juice, you know, food
20 products. But when the ship arrives with various
21 cargo, it is often packaged with different types of
22 forest products so we are talking about different

1 types of logs and, you know, pulp, and all sorts of
2 things of the such. Paper, obviously paper bags,
3 different types of packaging material. How are you
4 -- what is your plan about labeling those? Because
5 oftentimes pieces of logs would stay on the dock,
6 move to another ship or, you know, and it's a little
7 bit different than pallets which at least they have
8 been fumigated and stamped.

9 MR. THOMAS: All packaging materials made
10 of wood is exempt from this Act, unless it is
11 brought in as such. And I know in Wilmington, I
12 worked in Philadelphia for a good many years, you
13 get pallets imported as such from Chile. So, those
14 would have to be declared as to what they are, but
15 the pallet underneath the fruit coming in from Chile
16 does not need to be declared.

17 AUDIENCE MEMBER: Different types of pulp
18 or -- if for example, you ship rolls of paper in
19 trains and stuff, so you would have like -- I'm
20 sorry.

21 MR. THOMAS: If it comes in as paper, then
22 it has to be declared. I think we have that right

1 now in the phase three schedule.

2 AUDIENCE MEMBER: So, paper products, yes.

3 Lumber and pulp, no.

4 MR. THOMAS: Lumber and pulp, if it is
5 lumber itself, yes it will have to be declared. But
6 that is more of the nuts and bolts that we were
7 trying to avoid today. But the point is that, it
8 shouldn't be the Port of Wilmington having to worry
9 about it, it is going to be the importer that is
10 going to have to know when that needs to be
11 declared. However, if the product is being T&E'd or
12 IT'd -- T&E is the best example. If it is not an
13 importation to the United States, there wouldn't be
14 any declaration requirement.

15 AUDIENCE MEMBER: Would it be labeled?

16 MR. THOMAS: It's not like wood packaging
17 material, so there is no labeling. The declaration
18 would be an electronic form that has to be filled
19 out.

20 AUDIENCE MEMBER: Thank you.

21 MR. THOMPSON: Good Morning. My name is
22 Kevin Thompson from the Canadian Embassy. First of

1 all, I would like to commend the administration as
2 well as members of the business community and the
3 ENGOs for coming up with a reasonable and feasible,
4 I think to use your words Matt, program of
5 implementation. And we certainly encourage more of
6 this in the months to come.

7 We have already submitted some comments to
8 the administration identifying a list of outstanding
9 questions. Some of those questions have been
10 answered through the Federal Register notice. But I
11 do have one question I would like to raise today,
12 and we do intend on submitting some additional
13 comments in response to the Federal Register notice.

14 But my question is, to what extent have
15 you given consideration to looking at product
16 categories below the chapter level and identifying
17 product categories that do not obviously fall -- or
18 carry with them a high risk of illegal harvesting or
19 illegal logging? So, to what extent are you -- to
20 what extent are you considering excluding or
21 including products based not just at the chapter
22 level but at the subheading level within those

1 various chapters?

2 MR. THOMAS: I might turn this to Cathy in
3 a second, but I can at least give you the basics.
4 Because of our time constraints and December 15th
5 looming quickly, we initially approached this at the
6 chapter level only and not the subchapter level.
7 But a prime example of really subchapter regulation
8 is not even really HTS codes, it is the chapter six,
9 plants for planting which would only include the
10 plants that are covered CITES, ASA, or state
11 regulations. So, anything else is exempt. And
12 really to categorize that by even line item would
13 almost be impossible. So, we are open is my point.
14 How we would do that, I don't want to get into the
15 situation of over-complicating everyone's lives, but
16 we're certainly open. Cathy, would you like to make
17 any comments on that?

18 MS. SAUCEDA: We have considered that. It
19 would certainly be much more complicated to do that.
20 I don't know how many provisions there are in the
21 tier, but I think when I was teaching the harmonized
22 code there was like 10,000. I know we're trying to

1 minimize, but I think it is probably like 15,000
2 now, I don't know. So, there is a lot to look at.
3 I think it will become a lot easier once we learn
4 how certain commodities will be exempt from the Act.
5 But I don't believe the way that we are looking at
6 the automation right now that it's going to be an
7 all or nothing. I don't think the importer will be
8 required to make such a finite decision that they
9 would really need to know the six digit or the eight
10 digit heading on the imported goods.

11 So, like Bill said, we have thought about
12 it. I know that that is some recommendation and I
13 think it would be helpful for things like chairs
14 that have wooden seats, or things like that, where
15 you can't tell what it is by just the chapter. So,
16 we haven't closed that idea, but it has its pluses
17 and its minuses.

18 MR. THOMAS: And I think, one last
19 comment, is that overall the importer only has an
20 obligation to declare if there is a wood product
21 there to declare. So, if a furniture shipment comes
22 in and it is all metal chairs, we wouldn't expect to

1 see a declaration even though it does fall under
2 that chapter.

3 MS. MOORE: Good morning. My name is
4 Karen Moore and I am with the Wine and Spirit
5 Wholesalers of America and I have two questions.
6 The first of which, putting aside my concern about
7 the fact that most wine and liquor contains
8 plant-based product, what about the labels? And
9 that should go beyond, of course, my product but
10 elsewhere. I mean, a simple paper label, would that
11 be encompassed by this?

12 And the second question I have is that the
13 declaration form asks for the value of the goods and
14 I'm curious what that value is based on and if there
15 is any definition of that?

16 MR. RHOADS: I didn't quite catch the
17 second part, but I will answer the first part and
18 then ask you to repeat the second. Regarding the
19 first question about whether a label on a bottle
20 and, to extend that, we've gotten similar questions
21 regarding whether a manual coming with a VCR might
22 need a declaration. A strict reading of the statute

1 might suggest that it is subject to the Act. We
2 have no intention of enforcing that requirement on
3 labels, hangtags for garments that might come along
4 You know, arguably by the statute, they could fall
5 within what might require a declaration, but as you
6 see, we are proposing a phased-in enforcement and
7 those articles really aren't on our horizon line for
8 our having a phase-in enforcement period.

9 But could you repeat the second part of
10 the question?

11 MR. THOMAS: I can take the second part.
12 I think where we are leading on value right now is
13 the value of the cargo.

14 MS. MOORE: Okay.

15 MR. THOMAS: And that simplifies it. But
16 let me make one more comment on the wine, as many
17 people consider that to be a food product, many of
18 my good friends --

19 MS. MOORE: I figured I'd wait until you
20 came out with a list.

21 MR. THOMAS: So, I think it probably will
22 not be included in terms its applicability.

1 MS. MOORE: Okay. Thank you.

2 MS. SCHROEDER: Hi. My name is Lisa
3 Schroeder with the Dow Chemical Company and the
4 question is really, again, following up kind of on
5 scope. Our specific interest is obviously in
6 plant-based cellulosic plastics and chemicals, where
7 there is plant input, but that's been chemically
8 reacted and then becomes everything from
9 polyethylene to tiles and adhesives, those are the
10 products that are actually being imported.

11 Is it likely that those cellulosic
12 products will fall under the Act or will require
13 additional declarations?

14 MR. THOMAS: We're still at the table on
15 that one. Likely, it is hard to say. Unlikely,
16 probably not either. You didn't notice it in the
17 phase-in schedule because it's pushed off for
18 further discussion. As we get clarification from
19 the interagency group and Congress and others, there
20 will be stuff going up on the web on that.

21 MS. SCHROEDER: All right. We'll make
22 sure to weigh-in. Thank you.

1 MR. GUZMAN: Let me just add a little bit
2 of context that I think might help. We get a lot of
3 questions about, will this, that, or the other
4 product be included. And I want to just explain
5 why we chose to implement the declaration
6 requirements through phased-in approach rather than
7 just doing it all at once as the amendments might
8 literally, on their face, suggest.

9 You know, At an interagency level we
10 thought that it would be important to start with the
11 products that would most directly affect the
12 conservation rules that are implicit in the statute.
13 And we also hoped that, doing it in a phased
14 approach would let us learn from the
15 implementational experience, that is
16 technologically. And would let us learn from the
17 public process like this one, that is from all of
18 you. Because there are lot of things that weren't
19 apparent on the face of this statute, different
20 products being covered, different implementation
21 issues. And we felt like structuring a process that
22 would allow participation, that would allow for

1 learning from a shared experience, both governmental
2 and non-governmental and industry, we thought that
3 would be the best approach.

4 So, it's not that we couldn't roll out a
5 a complete phase-in or provide a definitive list
6 much earlier in the process, it is that we
7 affirmatively chose not to so that we could have the
8 benefit of all of your experience.

9 MS. ELLSWORTH: Hi. I'm Susan Ellsworth
10 from the Sierra Club. I would like to just mention
11 how happy we are to see this really essential
12 modification to the Lacey Act. We have been working
13 with our colleagues in the labor and environmental
14 movement for quite some time to make this happen and
15 are looking forward to its full and timely
16 implementation.

17 My question pertains to the plant database
18 that was referred to earlier in the presentation.
19 And I am wondering if you can tell us a little bit
20 more and when that will come into existence, what
21 resources will be available there, a little bit more
22 on that. Thanks.

1 MR. THOMAS: I didn't know we mentioned a
2 plant database, but right now the system that
3 customs is going -- that CBP is going to use to
4 collect that data is a Legacy system. It was
5 actually turned off in 2002 and was used to collect
6 Lacey Act information for the Fish and Wildlife
7 service. We are going to amend that to collect
8 information for us. But CBPs responsibility is only
9 going to be to collect that information and send it
10 to USDA. We have not implemented a database on our
11 side yet. That is still on the drawing boards. We
12 are going to be obligated to do that obviously, with
13 the amount of information, we are not going to be
14 able to do that by hand. So, I really don't have
15 any details at this time of what our database will
16 look like.

17 MS. ELLSWORTH: Okay.

18 MR. GOLDBERG: Jim Goldberg with the
19 International Music Products Association. A couple
20 of questions regarding the declaration. I know that
21 the strong preference is for electronic filing, but
22 will you allow -- is the plan to allow a paper

1 filing for certain imports that are not to conducive
2 to electronic filing? And I am thinking, for
3 example, unless you find some way to exclude it, a
4 personal import or something that comes in via an
5 international shipper like FedEx or DHL or UPS.
6 That's number one. Then I have a second question.

7 MR. THOMAS: Do you want me to answer the
8 first one first? We have not decided on how we're
9 going to handle them yet, particularly personal
10 shipments. We are leaning toward exception because
11 we don't really have a way to handle them well.
12 Paper forms will be available, if they are
13 absolutely necessary, but we are encouraging
14 strongly the use of the electronic form.

15 MR. GOLDBERG: And the second question you
16 may have eluded to with the personal importation
17 answer. What about reimportation of product? For
18 example, a musician or a symphony orchestra goes
19 abroad to perform a concert and typically ships its
20 instruments abroad and then when they return to the
21 U.S., brings them back in. Will an import
22 declaration be required for that?

1 MR. THOMAS: We haven't even started to
2 talk about that yet. Generally, how are they
3 imported now? What are they brought in under?

4 MR. GOLDBERG: I'm not sure, to be honest
5 with you.

6 MR. THOMAS: I don't think a formal entry
7 is filed. I am pretty sure it's not, because you
8 are really not -- -

9 MR. GOLDBERG: Well, they would be
10 shipped, I mean the symphony orchestra would ship it
11 in bulk. It wouldn't be carried by an individual
12 musician, they would be shipped as cargo.

13 MR. THOMAS: We are going to have to deal
14 with -- could you send that one to our in-box there?

15 MR. GOLDBERG: Okay.

16 MR. THOMAS: That be a good one for
17 discussion.

18 MR. MCCOYD: Hi. My name is Ed McCoyd and
19 I am from the Association of American publishers,
20 which is the National Association of Book Publishing
21 Companies, and my question pertains not to the
22 declaration requirements, but to the general

1 prohibition on trading in illegally sourced products
2 made from wood pulp. And one thing the publishers
3 will want to know is whether there will be certain
4 affirmative requirements, will they need to
5 institute certain policies to make sure that, when
6 they acquire paper or books, if books are ever
7 enforced upon, that are manufactured overseas, are
8 there certain procedures that they will need to have
9 in place to ensure that they're not running afoul of
10 the prohibition?

11 MR. GUZMAN: Well, let me see if I can
12 answer this at a generalized level from the
13 Department of Justice standpoint.

14 I am glad that you mentioned the
15 substantive portion of the statute because there's
16 been a lot of discussion today, and rightly so,
17 about the declaration requirement. But I wouldn't
18 want us to forget about the underlying substantive
19 prohibition of the statute. The declaration
20 requirement is really a tool, as we see it. It's a
21 tool for information gathering, it will help
22 evaluate the efficacy of this structure when, in two

1 years as the amendments require, we need to come
2 back and see how well this is working. And may
3 provide information that will help us with other
4 facets of prosecution. But the declaration
5 requirement stands separate, in our view, from the
6 substantive provisions of the law.

7 And a lot of folks ask, you know, what
8 kind of things can we do that would give us a
9 guarantee or a safe harbor that the Department of
10 Justice won't prosecute us if we're doing our best.
11 And I think the best answer that can be given is
12 two-fold. One is to look back at the history of
13 Lacey Act prosecutions over time. As was mentioned
14 in the initial presentation, the law itself has been
15 around since 1904. So, what is different now it has
16 been expanded in scope and reach, but the basic
17 mechanism has been around for a long time and there
18 are a lot of cases that you can read to see what we
19 choose to prosecute as a matter of priority and
20 efficacy.

21 And then secondly, remember that the
22 substantive statute turns on knowledge. And so,

1 from our perspective, we kind of see it and think
2 look, there are folks who are trying very hard to
3 comply with the law and they may trip up on a few
4 minor points. There are folks who aren't trying at
5 all, out of ignorance, and then there are folks
6 trying very hard to affirmatively avoid the reach of
7 the law. And, as we go about ordering our
8 prosecutions and making our priorities, I can assure
9 you that we're going to be looking to that latter
10 category first and as a matter of highest
11 importance.

12 MR. MCCOYD: Thank you.

13 MR. GOLDBERG: I am Adam Goldberg from
14 Pioneer Electronics. You talked about paper labels
15 and tags and packaging. I wonder if you could say
16 what thought has gone into whether and when the
17 declaration for, for example, paper product manuals
18 that accompany larger things?

19 MR. THOMAS: Again, we're trying to avoid
20 the specific examples at this meeting today. So, we
21 obviously did not put it in the notice. We are
22 putting it off for review and I think most people

1 are looking at that as being outside of the scope
2 this right now. But, it is still on the table for
3 discussion between the interagencies.

4 MR. GOLDBERG: Thank you.

5 MR. AUTOR: Eric Autor with the National
6 Retail Federation. I just wanted to understand a
7 little bit better about the interface between CBP
8 and USDA on enforcement with respect to seizure and
9 forfeiture and CBP and USDA with respect to the
10 import declaration. Specifically, as I understand
11 it, on the import declaration, the intention is is
12 that it will be ultimately incorporated into ITDS.
13 For the time being, there will be the legacy system
14 for fish and wildlife that will be employed. And my
15 understanding is that it will be CBP that will be
16 collecting that information and making it available
17 to USDA.

18 How then does the release decision, how
19 does that work between the USDA and CBP once the
20 import declaration has been filed and the goods are
21 -- the decision has to be made on release? And with
22 respect to seizure and forfeiture, who makes that

1 call? Obviously, the USDA or, I'm sorry, the DOJ
2 can undertake an enforcement action at any point
3 once the product has been imported and entered the
4 stream of commerce, but at the port, who makes the
5 call? Is it based upon information supplied to CBP
6 from Justice, or does the individual customs
7 inspector make that call? How do you envision that
8 operating?

9 MS. SAUCEDA: First of all, when we talk
10 about the legacy Fish and Wildlife interface, that
11 is not exactly what we are doing because the word
12 interface has a lot of negative baggage. So, that
13 was really used for ease of reference only, those of
14 you dealing with the harmonized understand that. We
15 are building something between USDA and CBP that we
16 are working on right now. The way we view this
17 happening, as far as the presentation of the
18 electronic information, we do not necessarily
19 believe that this will cause us to hold the goods at
20 the border. There will be, in my mind, as a
21 nontechnical person, the declarant will make either
22 a yes or no in the record and if it's a yes, they

1 will provide the data, and if it is a no, they won't
2 provide the data. There will be no calling back and
3 forth to USDA or whatever, it will be a completely
4 automated transaction.

5 Now, as far as any of the other issues
6 with enforcement are concerned, I am going to let my
7 colleague from Justice answer that. I know that, as
8 far as enforcement is concerned from a CBP
9 perspective, we have not really gotten into that
10 area yet, since we are not enforcing anything at
11 this point.

12 MR. GUZMAN: Well, Eric, I think you
13 raised a good question because it highlights the
14 fact that the declaration itself doesn't ask the
15 importer, or whoever else is filling it out, to
16 state whether the wood in question is either legal
17 or illegal. It simply asks for four basic pieces of
18 information about the wood coming into the United
19 States.

20 So, in my view, from an enforcement
21 standpoint, the declaration itself wouldn't provide
22 a basis for forfeiture. That is not to say that the

1 declaration couldn't be enforced ultimately if it
2 were found to be inaccurate and knowingly so. It
3 has it's own substantive component in that way, but
4 the basic information asked for on the declaration
5 form, in my view, doesn't provide the basis to seize
6 a shipment with nothing more.

7 So, the seizure and forfeiture provisions
8 I think are very much like the potential criminal
9 penalties or the potential civil penalties. They
10 are one of three or four basic tools that the
11 Department of Justice has in hand that it can use as
12 it exercises its discretion to pick the prosecutions
13 that make the most sense in terms of the underlying
14 goals of the statute.

15 MR. THOMAS: And the last piece would be
16 that USDA involvement would be involved with CBP in
17 making some decisions about false declarations and
18 whether we will take any kind of actions there. I
19 don't think it will go to seize and forfeiture
20 unless it is a violation of the Lacey Act itself.
21 But we have not even started any discussions on how
22 that is going to happen.

1 MR. CORTESI: Hi. Lefcadio Cortesi from
2 ForestEthics. We are an environmental NGO and we
3 work with companies to help them track their supply
4 chain to make sure that they don't have a legal or
5 environmental or social controversy in their supply
6 chain.

7 We're thrilled to see this legislation and
8 just grateful for the interagency cooperation that
9 is obviously on display at this hearing and look
10 forward to working with you in the future.

11 My question -- I wanted to say one thing
12 about the declaration, I think, for businesses is
13 that it does indicate that there is a growing trend
14 in corporate responsibility of understanding your
15 supply chain and this declaration is a very useful
16 tool in starting to put that process in place. We
17 have been working with different companies to do
18 that and understand their supply chain, with some
19 very interesting and, I think, positive results.
20 Both for their brands as well as for the environment
21 at the end.

22 My question has to do with if you guys

1 have any plan for risk assessment vis-a-vis specific
2 species or specific producers and how -- is there a
3 process that you envision to determine best
4 practices with the potential idea of putting some
5 incentive or fast-track type of mechanisms in place
6 for importing and do you see any way -- I mean, I am
7 just wondering how different institutions, whether
8 it's from non-government, from business, from
9 government -- collaborating around that, I think
10 we've been talking with RILA as well as some
11 individual businesses, about defining those best
12 practices and I was wondering how folks on the panel
13 are looking at that? And if there will be a risk
14 assessment as part of the implementation.

15 MR. THOMAS: I think I would like to get
16 this off the ground first and then discuss that.

17 MR. CORTESI: Okay.

18 MR. THOMAS: But you bring up an
19 interesting idea and it certainly one that we would
20 be willing to discuss. But no, we have not looked
21 any of that yet. The complications of just getting
22 this system off the ground is where we're at right

1 now. But that certainly is something the future.

2 MR. CORTESI: Sure. Sorry to jump the
3 gun, but will get those discussions started and we
4 can make sure we have them in place by the time
5 you're ready for that piece. Thank you.

6 MR. THOMAS: Thank you.

7 MR. GUZMAN: I would add that, among the
8 many reasons to have electronic systems, we were
9 imagining something just like. That an electronic
10 system for the declaration requirements will make
11 the information much more usable, and not only
12 necessarily by the government, but by NGOs or other
13 interested parties, so that we can have real data
14 about the scope and magnitude of the importation
15 issue as opposed to single point-of-view
16 perspectives or supposition about what the overall
17 picture looks like.

18 MS. ROWDEN: Marianne Rowden, AA EI. My
19 question is about, ultimately, what are you going to
20 do with the data? We understand that you will need
21 it for criminal and civil enforcement as part of
22 your cases, but are you going to be sharing it with

1 foreign governments and other entities outside of
2 the government, or will it be subject to FOYA
3 requests?

4 MR. THOMAS: I believe it would be subject
5 to FOYA requests, obviously. Our goal is to just
6 give out -- anything we do give out would be the
7 gross data about genus and species and type of
8 product coming in and where it was coming from. So,
9 the goal of the data here is mainly to look at the
10 relationship to the product, genus and species, and
11 country of origin and how the stuff is moving,
12 rather than specific importers.

13 MR. GUZMAN: We would invite people to
14 submit comments about that issue. As we talk to
15 various folks, you can imagine that there's a
16 variety of viewpoints about how accessible or
17 inaccessible the data should be. But we very much
18 want to take your guidance into consideration as we
19 make those decisions.

20 MR. DRISCOLL: Good morning. Ryan
21 Driscoll from FedEx Ground. I wanted to see if
22 any of you could speak to what would be

1 required of carriers for the import
2 declaration, if anything.

3 MR. THOMAS: I don't think we've given any
4 responsibility to the carriers themselves other
5 than the responsibility to the importers to
6 communicate the requirements.

7 MR. DIORIO: Good Morning. My name is
8 Chuck Diorio with the World Shipping Counsel.
9 We represent a global fleet of about 3100
10 container vessels. I wanted to just ask a
11 clarifying question on the declaration for
12 certain types of cargo. You mentioned T&E was
13 exempt. My question was whether or not IE
14 cargo or FROB cargo would require a
15 declaration?

16 MR. THOMAS: Well, when you say FROB, is
17 it going to end up in the United States or is
18 it going to stay on board and then go to
19 Canada?

20 MR. DIORIO: No, it would be going
21 foreign.

22 MR. THOMAS: Okay. Then no declaration

1 requirement. It has to be imported into the United
2 States.

3 MR. DIORIO: IE?

4 MR. THOMAS: No, it is not imported.

5 MR. DIORIO: Thank you very much.

6 MS. BECKER: Hi, there. Lisa Becker from
7 RNA. Actually, two questions for you. One pertains
8 to carnies, for any carnie merchandise coming to the
9 United States since it is a temporary importation,
10 will this declaration be required?

11 MR. THOMAS: Another issue that we have
12 not discussed yet. Its a good one to add to this
13 discussion. I would lean toward no, but I need to
14 bring that to the interagency group so that they
15 would understand the implications.

16 MS. BECKER: Second question, as this
17 implementation, actually the form and the electronic
18 filing applies to FTZ merchandise, when are you
19 coming to require that form in submission are you
20 going to require it at the time that the T14 is
21 filed or at the time of withdraw from the foreign
22 trade zone?

1 MR. THOMAS: I think the time it enters
2 the foreign trade zone.

3 MS. BECKER: And granted, that is a draft
4 form, but I see it is set up more for say like a
5 consumption entry --

6 MR. THOMAS: It's possible that's when --
7 we haven't really discussed the foreign trade
8 situation much yet.

9 MS. BECKER: Thank you.

10 MS. JOHNSON: Hi. Andrea Johnson from the
11 Environmental Investigation Agency as well. I want
12 to concur with my colleague earlier about how
13 excited we are about this legislation and the
14 important signal that it's going to send to
15 international markets about illegal logging and
16 trading associated products and also how gratifying
17 and exciting it is to see this kind of interagency
18 coordination.

19 It is probably early in the game for this,
20 but I am wondering if you could give us any sense of
21 how that coordination will continue or what form it
22 might take in the future? Whether there will be

1 some sort of permanent, interagency body that comes
2 of this process. And also I guess a little bit more
3 about the role of Fish and Wildlife potentially
4 moving forward in enforcement? Thank you.

5 MR. THOMAS: Well, I see this group
6 staying together for little while anyway, maybe for
7 the next couple of years -- I kind of look at it as
8 a chain sometimes. No, Fish and Wildlife has been
9 intimately involved maybe I'll let him comment to
10 that, in terms of development of everything we've
11 done so far. They bring the history of the Lacey
12 Act with them and the enforcement of the Lacey Act
13 before, so they have a lot of experience on that.
14 They are also working with us very closely on the
15 definitions of common cultivar and common food crop.
16 They will be jointly published, as we enforce some
17 CITES with normal CBP regulations that have been
18 published in conjunction with Fish and Wildlife as
19 well.

20 So, I don't see this interagency group
21 going away. It has not been chartered or anything
22 like that as of yet and I don't know if that will

1 happen. I think we have been too busy trying to
2 deal with the nuts and bolts. But certainly it is
3 worth looking at having a group that's an advisory
4 group to continue in this process as it moves along.
5 That's where we are now.

6 MR. MENDELSSOHN: And from a Fish and
7 Wildlife Service perspective, this will be another
8 tool in our tool belt to pursue investigations
9 involving illegal harvesting of timber in foreign
10 countries. As you may be aware, before the
11 amendments we couldn't enforce foreign law as it
12 relates to plants. So, we do -- based on our
13 priorities we will continue moving forward with this
14 and being active with our partners in investigating
15 illegal logging.

16 MS. JOHNSON: Thank-you.

17 MS. DELTO: Good morning. My name is Ana
18 Maria Delto (phonetic) from the Embassy of Peru. I
19 have, in fact, two questions. It was mentioned, I
20 think in the presentation of Matt, that some
21 textiles, pharmaceuticals, and printed materials
22 would be included. I'd like to know if, at this

1 point of time, do you have any idea about what sort
2 of textiles will be included in those requirements?
3 That would be my first question.

4 MR. THOMAS: That's why they were pushed
5 off, they're still on the table. They were used as
6 an example only. We don't have a date for
7 implementation, if there will be implementation on
8 things like that.

9 MS. DELTO: Thank you. And my second
10 question would be in as much information for
11 imported products that should be constructed and
12 prepared, do you have in mind to -- a certain type
13 of campaign, informative campaign, or notifications
14 through the WCO or WTO or the embassies, the U.S.
15 embassies abroad, in order to have this requirement
16 to be in full knowledge of all the suppliers that
17 would be involved in this?

18 MR. THOMAS: We're very interested in
19 making sure that all of our embassies are briefed on
20 this subject. We have not done that yet. This is
21 our first attempt at a public meeting because we
22 don't have all the details hammered down as to where

1 things are going to fall out. As time goes on and
2 as those decisions are made, we will come up with
3 more concrete information, but the embassies will be
4 kept in the loop on that.

5 MS. DELTO: Thank you very much.

6 MS. RAPPORT: My name is Maria Rapport and
7 I am with Broker Power and I have a few questions.
8 If you don't know the countries or the species, what
9 are you going to do? I mean are you going to give
10 people lists or -- I would imagine that would be
11 common and I was waiting for someone to ask that
12 question.

13 MR. THOMAS: I think we are going to try
14 to link into a database for plant names, but I don't
15 know how that is going to help you, when you say you
16 don't know the species or you don't even know the
17 type of wood that you're --

18 MS. RAPPORT: Well, I assume today
19 probably most people don't know the species or the
20 genus of what they are bringing in. It might
21 possible that, even with the timeline you have given
22 them, that it might not be able to be easily known.

1 Are you assuming everyone will be able to know?

2 MR. THOMAS: Well, we are not making a
3 broad assumption. The statute gives some leeway for
4 them to get their best estimate of what's in the
5 shipment. So, if you know that it's pine, you would
6 look at the species of pine that is prevalent in
7 that particular country, you could probably find
8 that out using the database.

9 MS. RAPPORT: In your database?

10 MR. THOMAS: I haven't looked at it
11 extensively yet to see if it will give you those
12 links, but it will give you the names.

13 MS. RAPPORT: Okay. Maybe you could, you
14 know, beef it up by the time April rolls around.

15 MR. THOMAS: If we have the time to do
16 that, I certainly would be happy to.

17 MS. RAPPORT: That would be great. Also,
18 a policy for how to handle noncompliant shipments is
19 under development. I assume that would be by April
20 or by December, or what?

21 MR. THOMAS: By April.

22 MS. RAPPORT: By April. And it looks like

1 you have not later than two years after enactment
2 you review how everything is working. So, you have
3 an unusual amount of discretion on how to shape
4 this. It is not just do what the law says, you are
5 able to shape it to see what works, what is
6 practical. Is that a good understanding?

7 MR. THOMAS: And that's why there is an
8 interagency group involved and Congress is involved
9 as well.

10 MS. RAPPORT: Okay. Thank you.

11 MR. GUZMAN: Two quick points there. I
12 don't think we have an unusual amount of discretion
13 here either from the enforcement side or from the
14 implementational side. I think this a very common
15 process when Congress sets a law that creates some
16 kind of direction or scope and the implementing
17 agencies and the enforcement agencies need come
18 together and figure out how best to do that using
19 both experience and common sense and cooperation.

20 But your earlier question though raised a
21 point that I want to touch on. You know, when you
22 were going towards the issue of, well, what if you

1 don't know what to put on the declaration. I think
2 the amendment actually does give some guidance in
3 terms of what you are supposed to do if you don't
4 know. But that highlights the difference between
5 purpose of the declaration, which is an
6 information-gathering tool principally, and the
7 substantive portion of the statute, which
8 effectively says it is no longer acceptable to
9 remain at least, by design, ignorant of the origin
10 of the wood that comes into these various products,
11 at least once it enters the United States. So,
12 there is a certain responsibility in the
13 substantiative portion of the statute, not the
14 declaration but the substantive statute, to dig a
15 little deeper than maybe folks have in the past, in
16 terms of understanding where the wood came from and
17 under what conditions it was harvested.

18 MS. CARLSONS: Hello. My name is Elisa
19 Carlsons and I am with the firm Keller and Heckman.
20 I just have a basic question about your definition
21 of plant. I understand that there is an exception
22 to plant packaging materials, but in the case where

1 the packaging itself is being imported, I was hoping
2 you could quickly confirm regarding your definition
3 of plant. You say that plant includes trees from
4 either natural or plant forest stands, but the
5 exclusion is any plants that are being replanted.
6 So, if wood pulp is ultimately coming from tree
7 farms or forests that are then replanted, would they
8 be excluded under your definition of plant?

9 MR. THOMAS: I don't believe the Act gives
10 you that exclusion for trees.

11 MS. CARLSONS: So, where it says if trees
12 come from tree plants, or tree farms, and those, you
13 know, tree farms replant trees year after year, that
14 does not fall under the exclusion?

15 MR. THOMAS: That does not fall under the
16 exclusion, I don't believe.

17 MS. CARLSONS: Okay. Thank you.

18 MR. THOMAS: It does fall under the
19 definition of plant, obviously.

20 MS. CARLSONS: Right. Okay.

21 MR. MURRAY: I guess I am your last
22 question. Good morning and thanks for having this

1 session. It has been very informative. I am Chip
2 Murray from the American Forest and Paper
3 Association. I have two questions. One, back on
4 the species difficulties that folks are going to
5 have. I noticed on the form that you passed out,
6 the draft form, for the Ramin example, you had the
7 genus and then an abbreviation of multiple species
8 after it. Is that going to be an acceptable way of
9 filling out the declaration?

10 MR. THOMAS: We prefer if you had a
11 distinct species, that would be the best declaration
12 you could make. If you really don't, if you know it
13 could be a number of different species, then you've
14 got to put down genus with it.

15 MR. MURRAY: Yeah, I mean some of this
16 stuff takes a microscope to figure out the
17 difference.

18 MR. THOMAS: And sometimes you can't even
19 tell it then, depending on the processing that is
20 done. But, as best you can, we need the genus and
21 species and we need to know the source.

22 MR. MURRAY: But that would be -- I mean,

1 it's on your form so I'm assuming that --

2 MR. THOMAS: It's within the scope of the
3 Act, certainly --

4 MR. RHOADS: And keep in mind, too, that
5 that is a draft form.

6 MR. MURRAY: Oh, I understand. That's why
7 I asked.

8 MR. RHOADS: That is probably something we
9 are going to have to do a little bit better job
10 clarifying precisely that there is an expectation
11 that the identification will be to species.

12 MR. MURRAY: And the second question has
13 to do with the delayed enforcement, the
14 prosecutorial discretion that was stated in the
15 APHIS notice. Since the Department of Justice is
16 the primary enforcement agency, will we be seeing
17 the Department of Justice's signature on a similar
18 statement? Because I know there are people
19 concerned that the Federal Register notice spoke for
20 the government at large, it was only signed by
21 APHIS.

22 MR. THOMAS: The federal notice is notice

1 about the declarations and that's it, pretty much.

2 I think that our policy on enforcement of
3 declarations is what we're talking about today.

4 But there is the larger topic that Justice
5 has been talking about which is enforcement of the
6 Act.

7 MR. MURRAY: Well, I understand --

8 MR. THOMAS: Occur now.

9 MR. GUZMAN: Right. We were a participant
10 in and concurred in the Federal Register notice that
11 came out and so we understand the difficulties of
12 implementing the requirement and we thought that the
13 proposal was sensible and we thought that the idea
14 of taking comment on it made a lot of sense, too.
15 But there is a distinction between -- to be drawn
16 between the declaration of the substantive statute
17 which has been enforced since it was passed --

18 MR. MURRAY: Absolutely, I was just --
19 I was just referring to enforcement on the
20 declaration, that was all.

21 MR. GUZMAN: Yeah, I thought you were but
22 I just wanted to be clear about that.

1 MR. THOMAS: So, generally in the future,
2 since we are the lead agency, it will come out under
3 our banner, but it will have gone through the whole
4 process.

5 MR. MURRAY: Thank you.

6 MR. TUCKER: Hi. My name is David Tucker
7 and I am with Defenders of Wildlife. I'd like to
8 echo some of the comments some of my colleagues have
9 made from a coalition that we are working with,
10 saying how excited we are about this Act and the
11 importance we think it has for biodiversity
12 protection.

13 The question I have is, within the next
14 few months we are going to be transitioning to a new
15 administration for the first time in eight years.
16 Because it's been so long since we have
17 transitioned, do you see that as having an impact on
18 implementation at all, in terms of devoting
19 resources towards that transition and taking away
20 from the time line that you have outlined earlier
21 today? Thank you.

22 MR. THOMAS: It always makes things more

1 interesting for the agencies, but other than that,
2 we are moving forward and our goal is to implement
3 on the schedule that we have come up with. So,
4 April 1st is still our goal.

5 MR. DONOVAN: Good morning. My name is
6 Richard Donovan, Chief of Forestry at Rainforest
7 Alliance. First, just to comment. Kudos for moving
8 ahead with this. We are following it we do a lot of
9 auditing and verification, certification, multiple
10 source countries. One observation on the species is
11 it's really important, wherever possible, genus and
12 species, to state the obvious. So, the push in that
13 direction -- Secondly, is a broader question. My
14 sense, I might be a little bit naive in asking this
15 question, to what extent are you interacting with
16 other jurisdictions, other governments, in terms of
17 the requirements they might or that would be similar
18 to this? Because there are multiple countries that
19 are kind of in the process of dealing with these
20 same issues, in Europe for example. I am just
21 wondering if there's much interaction going on there
22 to look at consistency of requirements, so that in

1 essence you might even lead toward some kind of
2 international consistent system in some regard.

3 MR. THOMAS: We have not done at any of
4 that. We would be very interested in hearing about
5 it.

6 MR. DONOVAN: Thank you.

7 MR. GUZMAN: Let me add just a comment
8 there. Although it's true, we haven't had formal
9 consultation with other governments to see what
10 they're doing, I think that, at a variety of levels
11 informally, through participation in conferences,
12 through talking with other folks and following what
13 they have been doing, I think that a number of us
14 are pretty well-aware of what other countries and
15 other organizations throughout the world are trying
16 do to address the same root problem. And it has
17 been interesting to see how they have either
18 criticized or appreciated the Lacey Act and it has
19 been interesting to see what steps they think are
20 either better or complementary to the Lacey Act.

21 MR. HJELM: Good morning. My name is
22 Lars-Erik Hjelm and I am from the law firm of Akin,

1 Gump, Strauss, Hauer, and Feld. I represent and our
2 firm represents various importers and exporters and
3 trade associations. And I have a question regarding
4 the general prohibitions under the amendments. And
5 I guess this question is more appropriately
6 addressed to the Department of Justice
7 representative.

8 The question is this, with respect to the
9 decision to prosecute cases, either criminally or
10 civilly, it seems to me, and maybe I'm wrong on
11 this, the issue of enforcing a foreign country's law
12 implicates the foreign policy prerogatives of the
13 United States government. And with that notion in
14 mind, with respect to the outreach that might be
15 performed by the federal government, will the
16 federal government appraise the importing and
17 exporting community of the statutes and laws and
18 regulations of foreign countries that it intends to
19 enforce through these amendments?

20 MR. GUZMAN: I think that's a good
21 question and it raises a number of issues. First,
22 we think outreach, and when I say we, I mean all of

1 the agencies affected in the implementation and
2 enforcement, we think outreach is very important,
3 which is why we are having meetings like this and we
4 have accepted speaking engagements in a variety of
5 forums. We have a concerted and an intentional
6 desire to get out and explain to the interested
7 community how the statute works, how we intend to
8 administer it, and how we intend to enforce it, at
9 least at the general level, speaking about
10 enforcement.

11 There is no question that as we have gone
12 through a long history of enforcing the Wildlife
13 side of the Lacey Act that it takes cooperation in
14 collaboration with foreign governments in order to
15 have successful prosecution. The point of linking
16 illegality in the United States with the laws of a
17 foreign country is, in part, to help them enforce
18 their own conservation measures, recognizing that
19 the United States has historically been a vast
20 market for these types of products, now to include
21 plants. But I don't think that the answer to your
22 question, which is will there be a specific list of

1 all the potential foreign laws, I don't think that
2 that would ever be developed and I am not sure it
3 would end up being as useful to the regulating
4 community as all the effort that would go into it
5 would suggest.

6 I think everybody is an expert in their
7 own particular product, or at least ought to be, and
8 the general thrust of the statute is that as it
9 relates now to wood, and formerly related to
10 wildlife and CITES-protected wood, that people need
11 to have more diligence about their supply chain and
12 a better understanding of the wood's origins.

13 MR. HJELM: Thank you. If I could just
14 follow-up, if you don't mind. And correct me if I'm
15 wrong, with respect to the other provisions of the
16 Lacey Act, this particular provision, it seems to
17 me, might be unique because at the foundation does
18 not lie a prohibition, it is based on an
19 international agreement. It rather is a general
20 prohibition under U.S. law for a foreign country
21 violation that is not multilaterally agreed upon in
22 an international agreement, like CITES. And, as a

1 consequence of that, it seems to me that the federal
2 government, in providing information to the
3 importing and exporting community, might be wise, it
4 seems to me, again, to tell the international
5 community what the laws are that the United States
6 federal government is going to enforce. Because I
7 would imagine that the State Department might not
8 want to enforce some country's laws, for example,
9 and they might want to enforce other country's laws.
10 But I'll rest there and I appreciate any other
11 comments you might be able to make in that regard.

12 MR. GUZMAN: Well, I would agree with you
13 that the Lacey Act Amendment than is different than
14 CITES, for example, where there is an international
15 treaty. But the Lacey Act amendment is not
16 different than the previous unamended version of the
17 Lacey Act that covered mostly wildlife and
18 CITES-listed plants. That had the same operative
19 mechanism that mechanism has been tried, tested, and
20 used in a lot of reported United States cases that
21 show how that mechanism has been used and what
22 results it has lead to.

1 You know, as I've looked back over the
2 reported cases they related to things like
3 harvesting undersized lobsters, catching crabs or
4 salmon out of season, but the underlying question
5 always in these prosecutions related to some
6 conservation effort that was enacted by some other
7 country. You could argue that whether the
8 concentration of effort was big or small or whether
9 it was efficacious or not, there was always a
10 linkage between the foreign law in question and such
11 conservation purpose. And what I know, at least in
12 my view looking back through reported cases, is that
13 these cases go to the core purpose of the Lacey Act.
14 We haven't chosen historically to make
15 prosecutions around the edges, to push the envelope,
16 to hang people up on technicalities. Is that a
17 guarantee to anybody? I don't think it is, but I
18 hope that it provides you some comfort in at least
19 our perspective.

20 MR. THOMAS: Last call for questions.

21 Well, as a postscript, I guess our plans
22 are to get back together again as an interagency

1 group and look at some new information that we have.
2 We look forward to hearing from you in writing from
3 our web site. Keep an eye on our website for any
4 updates to this whole process. And our plans are to
5 have another public meeting, probably later in the
6 winter, and we may go on the road with this in a
7 couple months throughout the United States.

8 Thank you for your time today.

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