

The Lacey Act: What You Need to Know

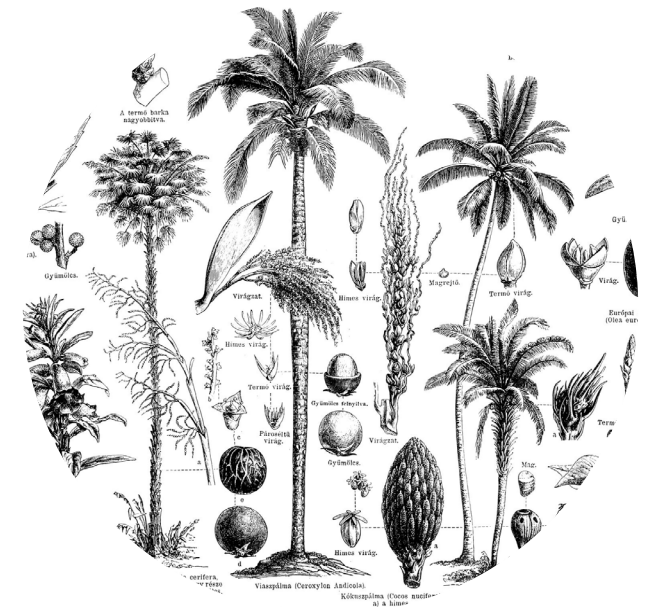
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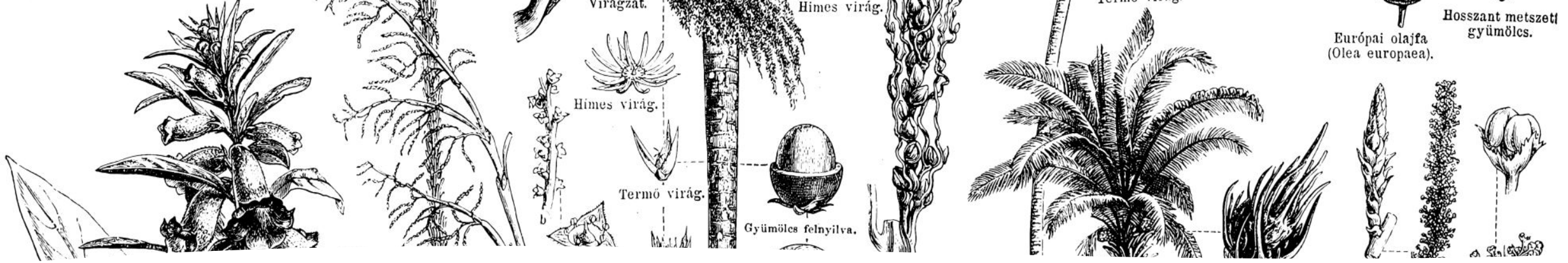


Disclaimers

The contents of this training are the responsibility of the International Wood Products Association and are intended to serve as a basic introduction to the Lacey Act. These training materials are not a full and authoritative statement of the laws or other regulations and do not constitute legal advice. We encourage participants to consult their own legal counsel or the agencies themselves for advice specific to their individual situation.

IWPA's original Due Care training was developed in 2015 with the generous support of World Resource Institute (WRI) and both the US and UK governments. This presentation is supported by a grant from the Animal Plant Health Inspection Service (USDA-APHIS). This material does not necessarily reflect the views of the any government agency, WRI or the companies and individuals that have supported and contributed to the development of the entire course catalog.

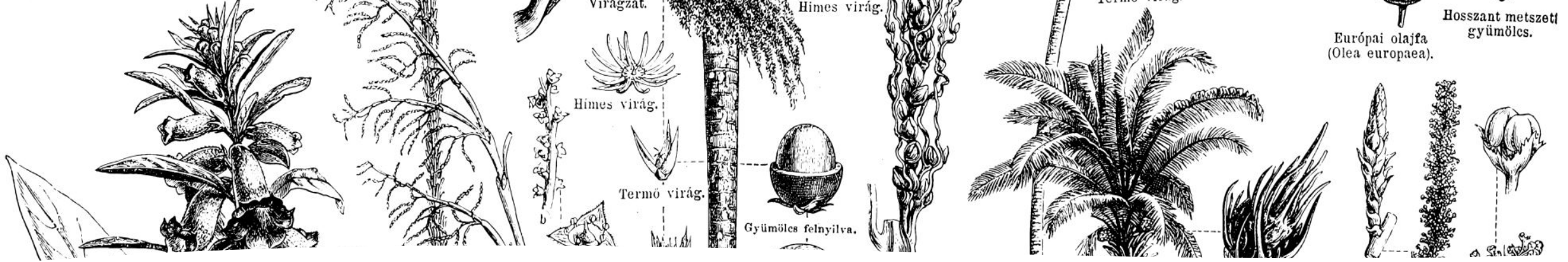




What products are covered by the Lacey Act?

Anything with plant or plant product materials, including those with just a small section of material (ie door handles, etc)





What we will (briefly) cover

1. Lacey Act History
2. 2008 Amendments
3. What's In & Out?
4. The Declaration
5. Jail, Fines, & other enforcement fun
6. What does compliance look like?
7. What do I need to know about complying in 2024?
8. Time for Questions

A Condensed Lacey Act Timeline

**1900: Blame the ladies!
(or at least their hats!)**

The Lacey Act is passed covering the trade in birds.

"In a single sale in London, in 1898 [...] over 500,000 bird skins were disposed of. It is a pitiful thing to contemplate the slaughter of such a multitude of these beauties for the gratification of human vanity."

- Rep. John Lacey

1900-2008

Six amendments are made to the Lacey Act including expanding the coverage to fish and animals, as well as establishing both individual and corporate responsibility.

2008

Wood and plant products are added in the 2008 Farm Bill.

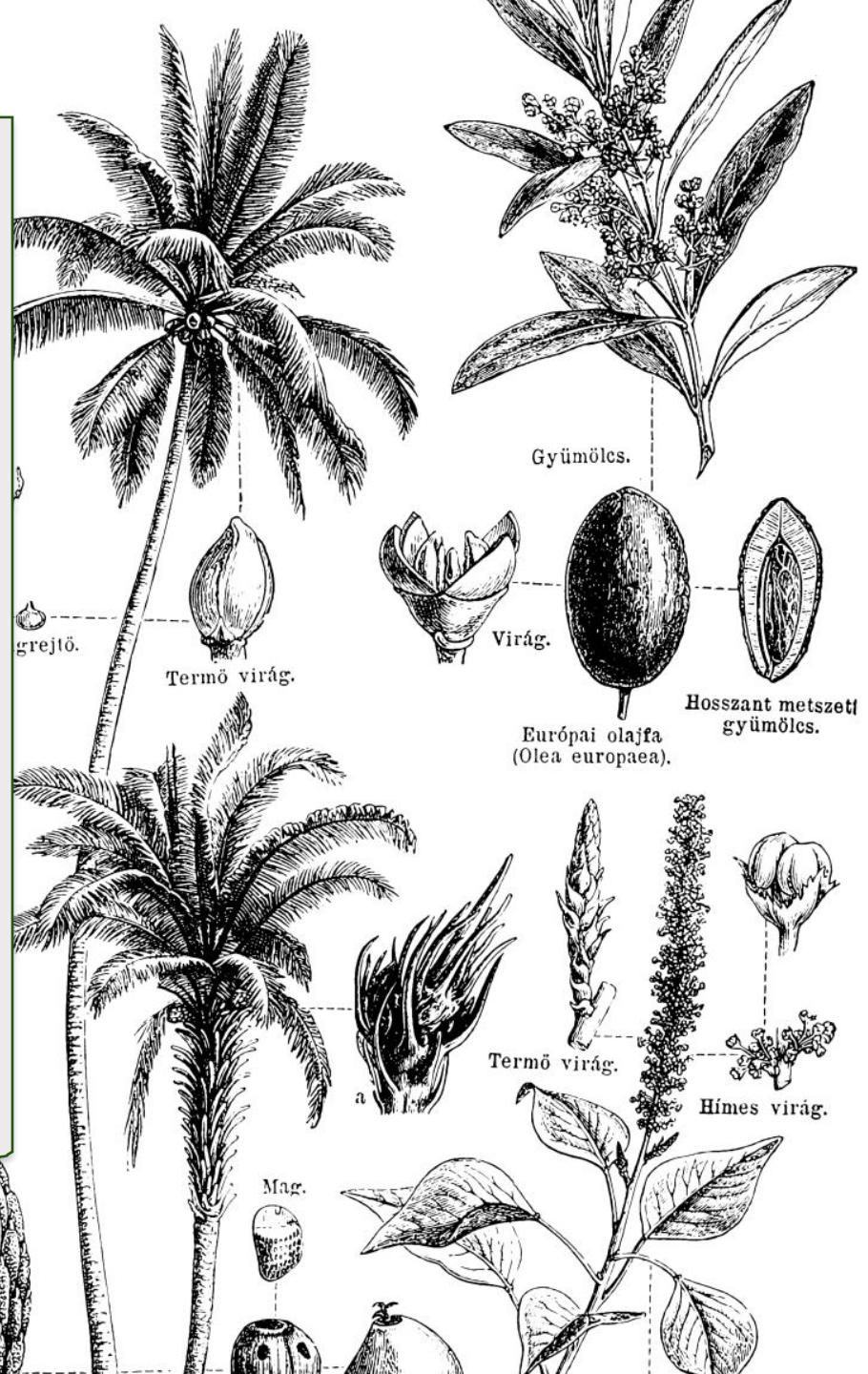
Bottom line: this is not a new Act and amendments are not a new concept.

Wood & the Lacey Act

2008: Plant and plant products are added and a new import declaration is added, the PPQ 505.

At the most basic level, the 2008 amendments forbid the trade of illegally taken plant or plant products:

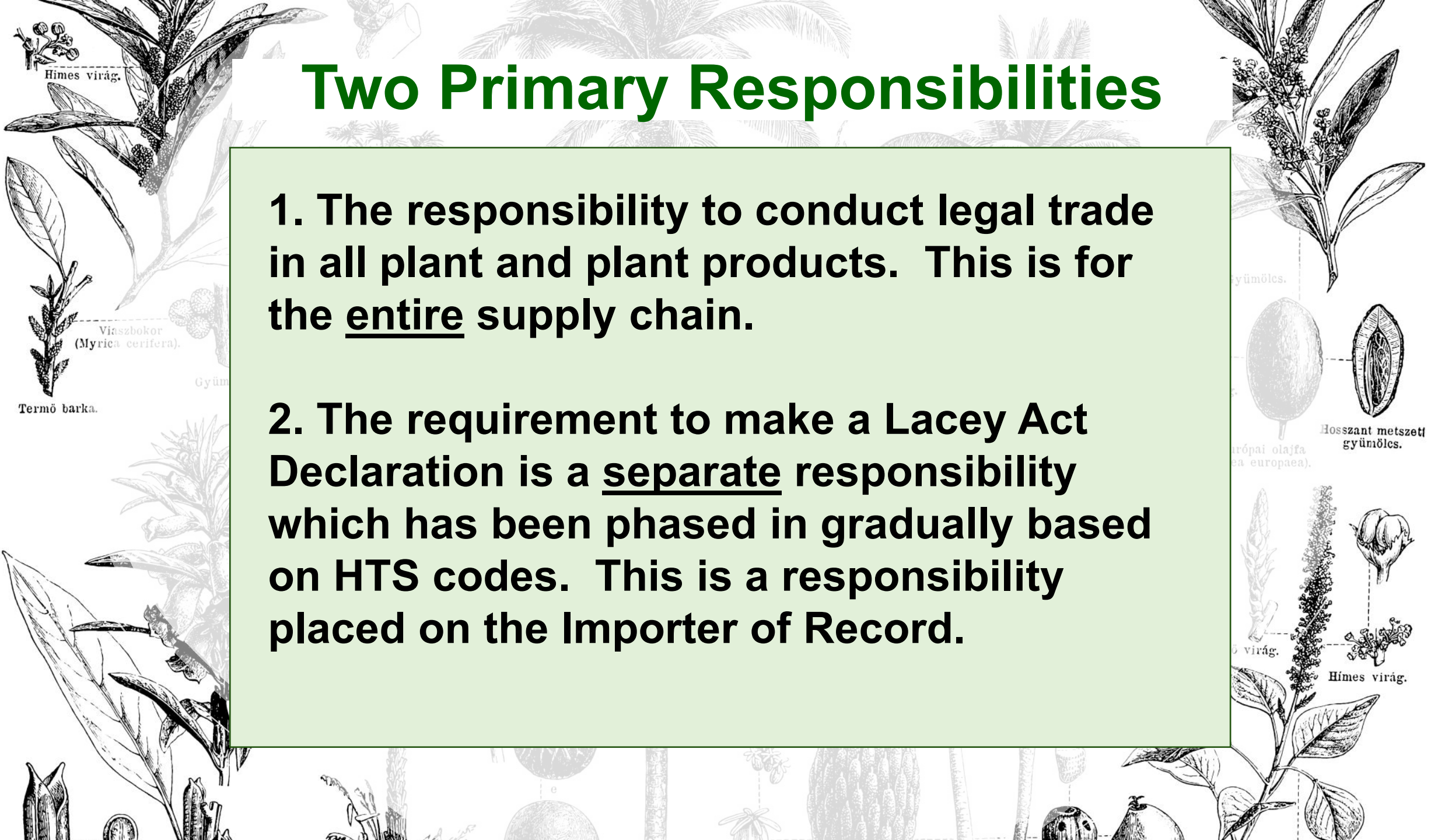
The Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, fish, or wildlife taken, possessed, transported, or sold in violation of any U.S. or state law or regulation, or in violation of any foreign law.



Two Primary Responsibilities

1. The responsibility to conduct legal trade in all plant and plant products. This is for the entire supply chain.

2. The requirement to make a Lacey Act Declaration is a separate responsibility which has been phased in gradually based on HTS codes. This is a responsibility placed on the Importer of Record.



Everyone Is Responsible

The WHOLE Supply Chain Matters

If it's illegal in one place then
it's illegal everywhere.

Even if you are not an importer of record,
you still **MUST** do due diligence! Lacey is a
STRICT Liability law. You do not have
commit a crime or even know about it have
liability.



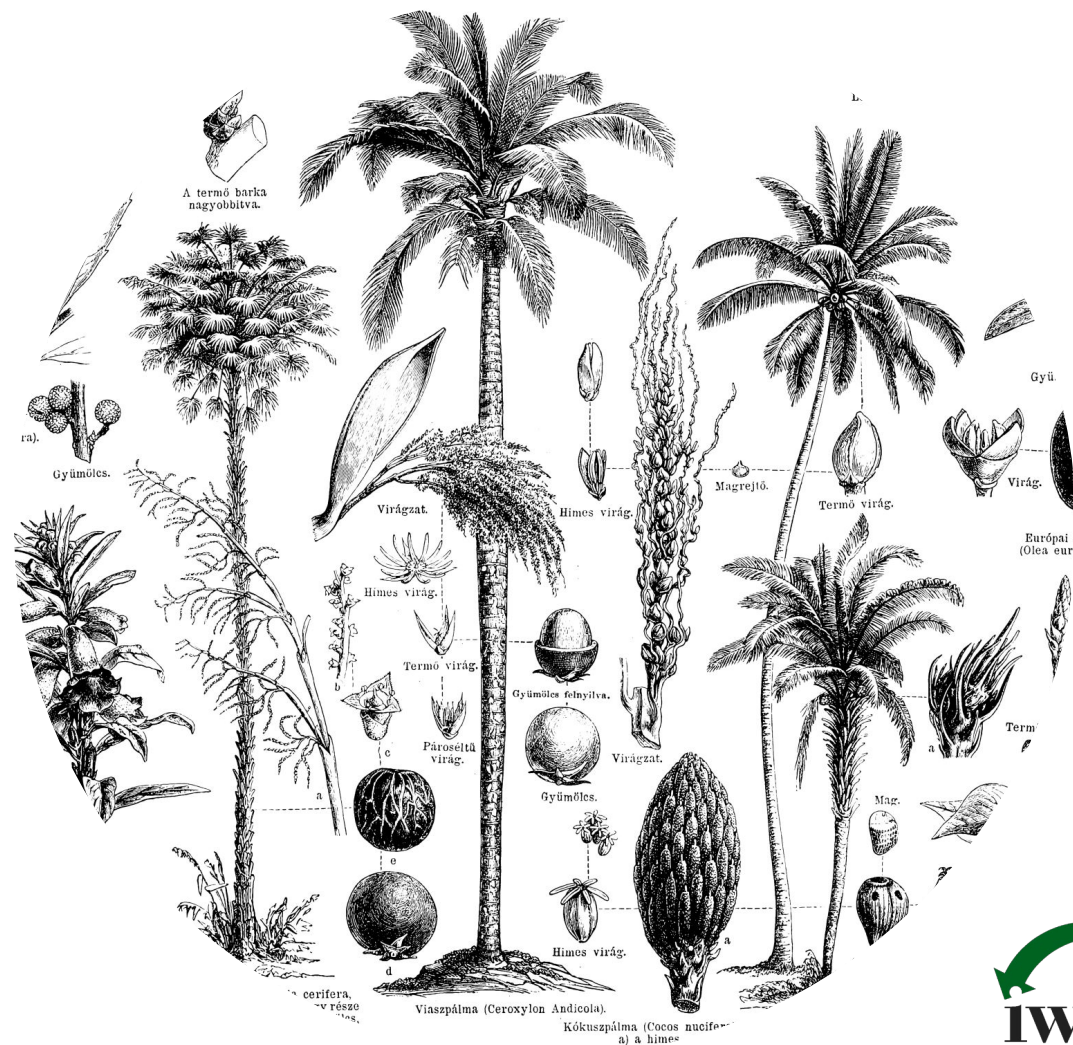
So what does this mean for you?

You must...

- Know your supply chain
- Know your product
- Know your supplier

Remember this as:

- ✓ **SOURCE**
- ✓ **SPECIES**
- ✓ **SUPPLIER**

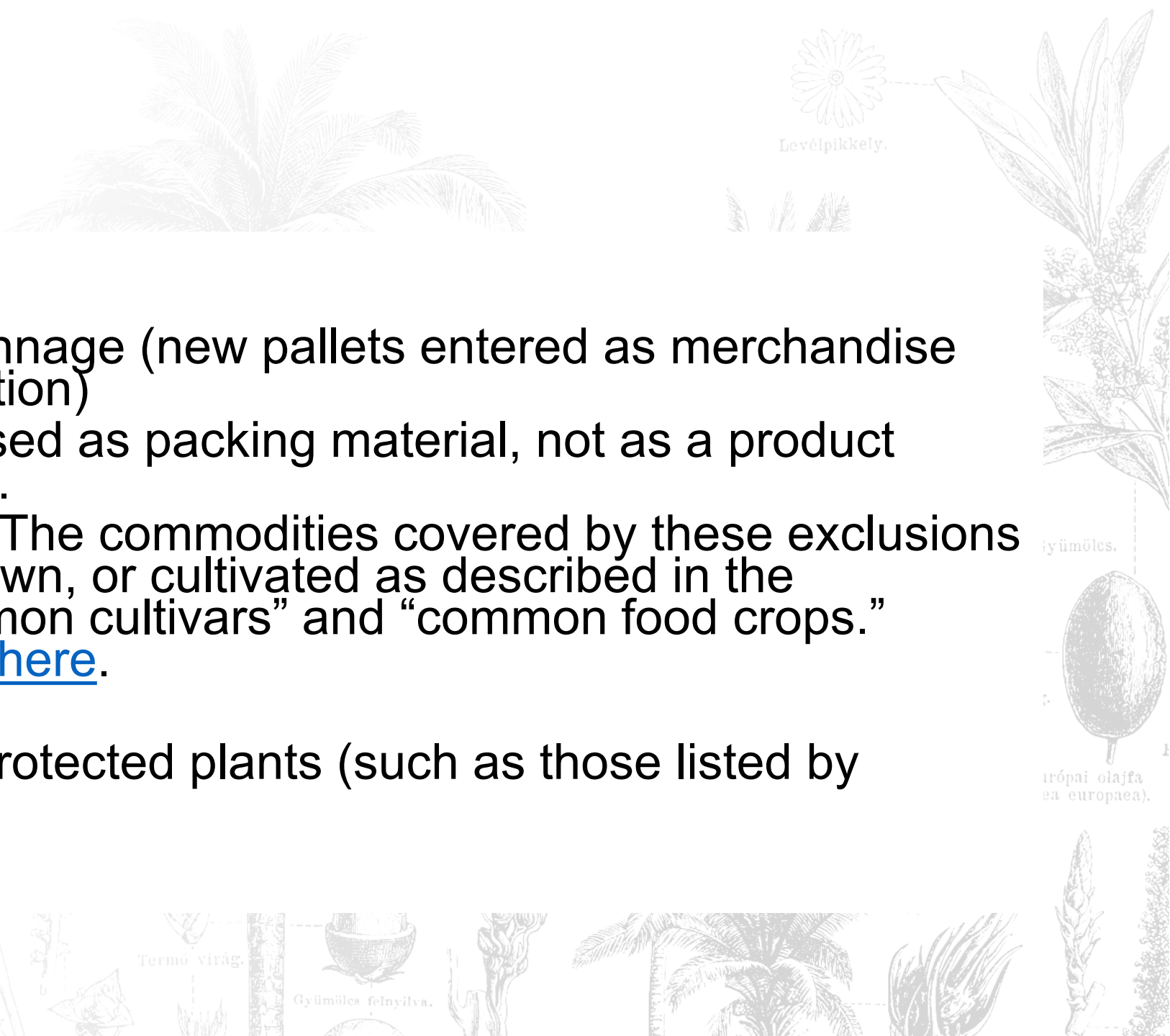


In & Out

What is not covered?

- Pallets used for dunnage (new pallets entered as merchandise DO need a declaration)
- Packing material used as packing material, not as a product entered individually.
- Common cultivars: The commodities covered by these exclusions must be raised, grown, or cultivated as described in the definitions of “common cultivars” and “common food crops.”
[APHIS information here.](#)

NOT an exclusion: Protected plants (such as those listed by CITES)



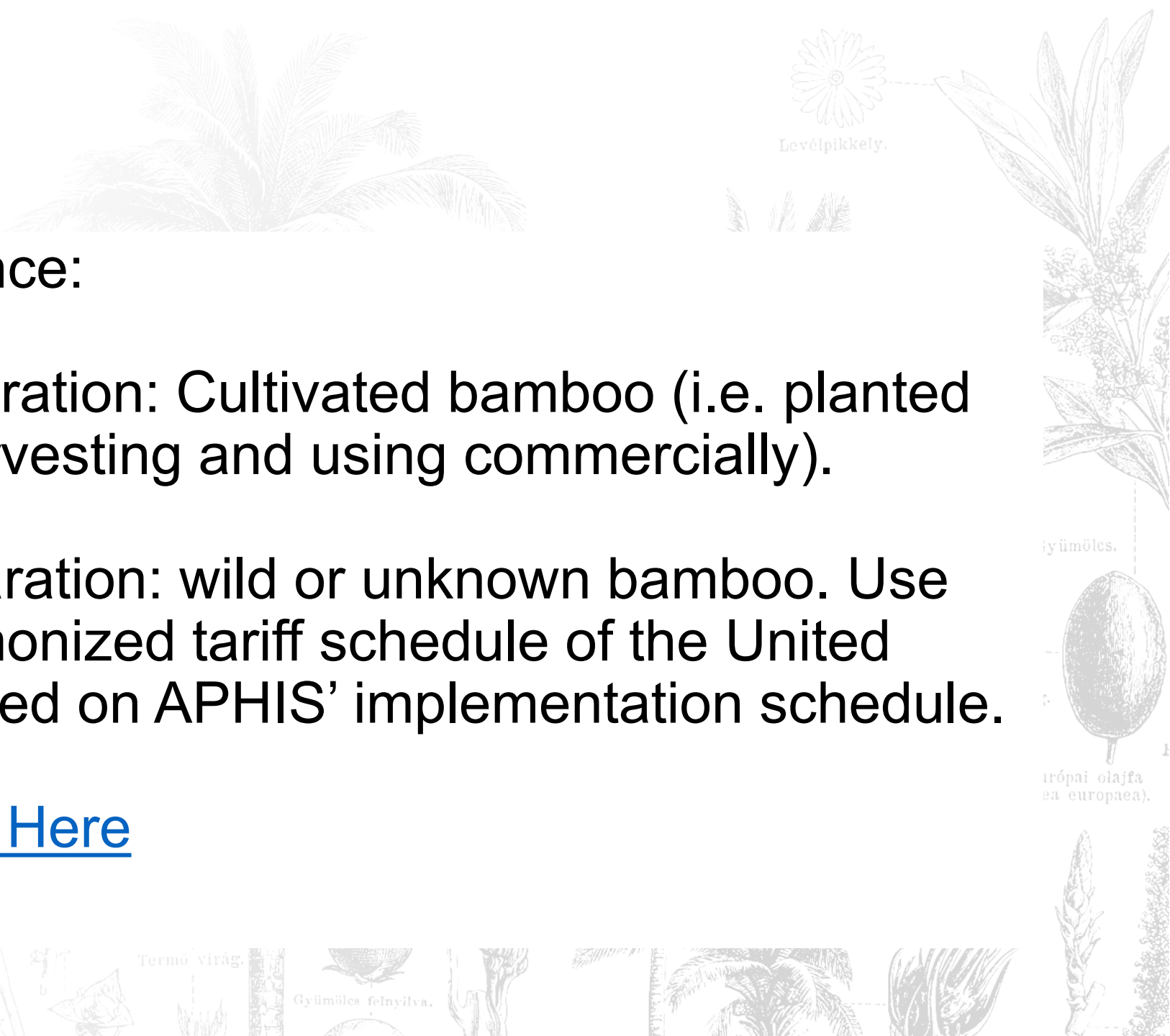
Bamboo

From the APHIS Guidance:

Not covered by Declaration: Cultivated bamboo (i.e. planted for the purpose of harvesting and using commercially).

Covered by the Declaration: wild or unknown bamboo. Use the HTS codes (Harmonized tariff schedule of the United States or HTSUS) listed on APHIS' implementation schedule.

[Full APHIS Guidance Here](#)



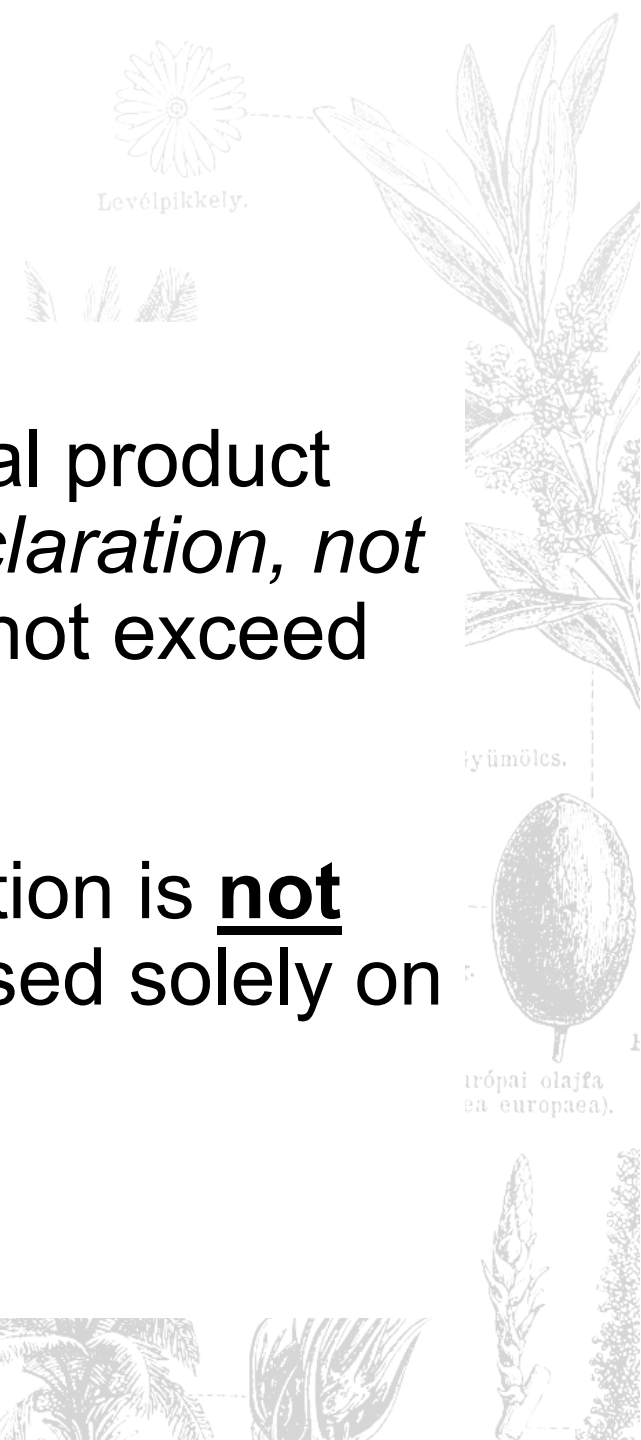
De Minimis Exemption

From the APHIS Guidance:

“No more than 5% of the total weight of the individual product unit [*IWPA: this means shipment or line item on Declaration, not individual item*], provided that the total weight does not exceed 2.9 kilograms.

Important note: APHIS’ Lacey Act de minimis exception is **not** related to CBP’s de minimis exemption, which is based solely on a shipment’s value.

[Full APHIS De Minimis Guidance Here](#)





United States Department of Agriculture

Animal and Plant Health Inspection Service

PPQ 505: The Declaration

- The Declaration has a phased in approach.
- We are now in Phase VII, which was published in the Federal Register with an implementation deadline of December 1. Comment period closed on July 31.
- The notice covers everything but composite wood products. APHIS lists examples of composite materials including paper, paperboard, particleboard, and medium- and high-density fiberboard (MDF and HDF).



United States Department of Agriculture

Animal and Plant Health Inspection Service

**PPQ 505:
My product is not
listed?**

Products that are:

- not listed in the current Phases 1-6 AND
- are not listed in Phase 7 AND
- are not composite material AND
- do not qualify for a de minimis exemption

....Do not currently require a Declaration.

Please note this could change during future phases.

These products ARE still subject to Lacey.

What is included on the PPQ-505?

Basic Business Information About the Shipment

The Wood/Product Specific Information

What is included on the PPQ-505?

PLANT PROTECTION AND QUARANTINE

SECTION 1 – Shipment Information

1. ESTIMATED DATE OF ARRIVAL (MM/DD/YYYY)		2. ENTRY NUMBER	
3. CONTAINER NUMBER(S) <input type="checkbox"/> See Attachment		4. BILL OF LADING	
6. IMPORTER'S NAME		5. MANUFACTURER IDENTIFICATION CODE (MID)	
8. IMPORTER'S ADDRESS		7. CONSIGNEE'S NAME	
10. DESCRIPTION OF MERCHANDISE		9. CONSIGNEE'S ADDRESS	

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

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

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





**Lacey is a strict liability law where
due care is not defined or even
specified, but...**

**it IS expected and each subsequent
enforcement action expands
expectations.**

Speaking of enforcement....

What violations will cost you

Penalty	Test	Maximum Penalty
Civil	In the exercise of due care , the defendant should have known (negligence) that the product was illegally taken, possessed, transported or sold. <u>Strict Liability</u> means this does not depend on defendant's knowledge of illegality.	<ul style="list-style-type: none"> • \$10,000 fine • Forfeiture of goods
Criminal Misdemeanor	In the exercise of due care , the defendant should have known (negligence or gross negligence) that the product was illegally taken, possessed, transported, or sold.	<ul style="list-style-type: none"> • Individuals: \$100,000 or twice the gross gain or loss; one-year imprisonment • Corporations: \$200,000 or twice the gross gain or loss • Forfeiture of goods
Criminal Felony	The defendant knew (fraud) that the product was illegally taken, possessed, transported, or sold.	<ul style="list-style-type: none"> • Individuals: \$250,000 or twice the gross gain or loss; up to five years imprisonment • Corporations: \$500,000 fine or twice the gross gain or loss • Forfeiture of goods



Gibson Guitars

- 2012
- Deferred prosecution agreement
- Imported wood
- 5 page compliance plan
- **\$350K penalties & community service**

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J & L Tonewoods

- 2015
- Felony Guilty plea
- US National Forest Wood (Maple)
- **1 year in prison, additional probation, \$159,692 restitution & Out of Business**



Lumber Liquidators

- 2016
- Felony guilty plea (Customs); & Misdemeanor (Lacey)
- Imported wood flooring
- Government supervised business for 5 years & 8 page plan
- **\$13+ million in penalties & payments**



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Young Living

- 2017
- Misdemeanor guilty plea
- Imported essential oils
- Government supervised business for 5 years and 22 page plan
- **\$760K in penalties and payments**

The Quintanas

- 2024
- Illegally imported and sold between \$25 million and \$65 million worth of plywood products in violation of the Lacey Act and customs laws
- **\$42,417,318.50 in forfeitures, as well as \$1,630,324.46 in storage costs.**
- **Each sentenced to 57 months in prison, 3 years supervised release, prohibited from engaging in business related to Lacey Act products.**

What does this mean practically for you?

Your company has to care because

- It's the law!
- It's also an ethical way to do business.

No one here wants to trade in illegal products.

That means you need to exercise due care. Understand your supply chain. Create, strictly follow, and continuously improve and expand your compliance program.

Due Care



- If you are an importer of record: you will need to file the PPQ 505 (Declaration) and conduct due care.
- Everyone in the supply chain (supplier importer, distributor, manufacturer, or a final retailer) needs to exercise due care.

Conducting due care will help protect you against trading in illegal wood, but it will also limit exposure to civil, criminal, and exclusion of entry.

The Department of Justice has made it clear that they will weigh the level of “due care” or “due diligence” on the part of a company in determining whether to pursue prosecution for a violation of the Lacey Act. The more work you do, the greater the likelihood that if there is a Lacey Act problem, the penalties will be reduced.



What does Due Care mean to you?

The three actions:

- **Evaluate** (review your supply chain for risk)
- **Mitigate** (if you find risk, find ways to reduce it)
- **Justify** (be confident that this is a good purchase and document your rationale.)

Your three risk areas are, broadly speaking:

- **Source** (country, region, specific forest unit) of harvest
- **Species** (the plant species and the product being purchased)
- **Supplier** / supply chain (what work are they doing, what are they offering you as evidence...)

How do you start?

- Communicate your commitment to trade only in legally harvested wood
- Get a written commitment from your suppliers on compliance with law
- Identify the species and ask questions about where raw material was harvested and your suppliers' own due care systems
- Consider tracking and traceability issues
- Require **critical supply chain** suppliers to provide greater documentation
- Consider scientific tools available
- What third parties can help you? (auditors, certifiers, lawyers, trade associations, universities, even ENGOs, etc.)
- Document your research and actions
- Take IWPA Training for more tips and tricks!

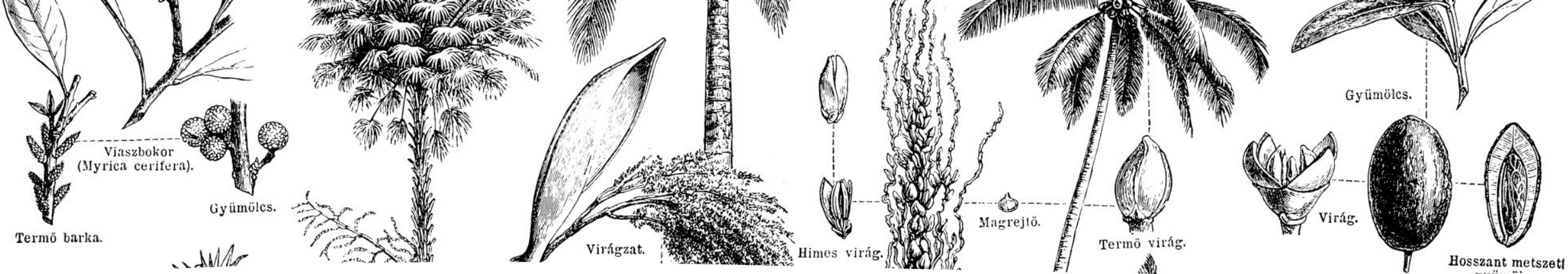
How do you prove Lacey Act compliance?

The bad news... there is no easy way.

There is no document or documents that you can use to ensure legality. It is not a one size fits all approach.

Due care is not a checklist: it's evaluating and mitigating your risk.

Sometimes it's making the hard call not to trade.

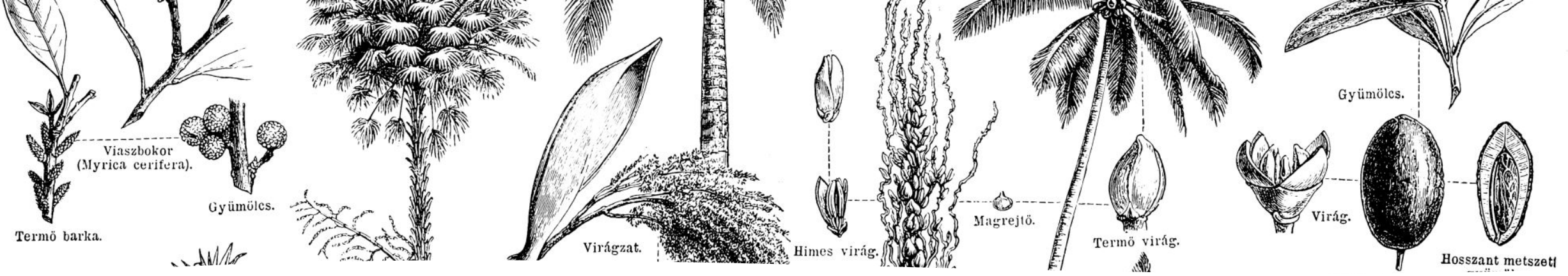


Where does Liability rest?

Concession owner –

**Harvester – Initial Processor – Purchasing Company –
Exporter**

**US Importer of record – Purchasing Company – Processor
– Finisher – Brand Name Company – Consumer**



**Need more Lacey Act
Education in Your Life?**



**Thank you and
any questions?**

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