

Updated Information Regarding Lacey Act/Farm Bill Plant Declaration Requirements

This is an update with information that has become available since our September 8 and 22, 2008 *NGJ International Trade Updates* addressing the new Plant Declaration Requirement arising out of the amendments to the Lacey Act that were included in the "Farm Bill."

Background

The recent amendments to the Lacey Act make it unlawful to import a wide range of "plants and plant products" without an import declaration. The declaration is required to contain several pieces of information, including the scientific name of the plant, the value of the importation, the quantity of the plant, and the name of the country from which the plant was harvested. Violations of the Lacey Act can be prosecuted either through civil or criminal penalties, or by forfeiture of the merchandise.

The requirement is expected to apply to an extremely broad range of products. The U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) has indicated that covered products include, among other things: certain live plants, plant parts, lumber, wood pulp, paper and paperboard, and products containing certain plant material or products, which may include certain furniture, tools, umbrellas, sporting goods, printed matter, musical instruments, and textiles.

Effective Date and Phase-In Enforcement Schedule

The declaration requirement becomes effective December 15, 2008. However, APHIS recently issued a *Federal Register* notice which contains a proposed phase-in schedule of enforcement of the declaration requirements (copy available at <http://edocket.access.gpo.gov/2008/pdf/E8-23984.pdf>). APHIS is seeking public comments regarding the proposed schedule.

The notice also indicates CBP is currently developing an electronic system that will collect the data required to be declared that is not already provided with an entry, and that enforcement of the declaration requirement will begin upon completion of the electronic system, anticipated by CBP to occur by April 1, 2009.

The proposed phase-in enforcement schedule provides for a number of enforcement phases. First, between December 15, 2008 and April 1, 2009 (or as soon thereafter as the electronic filing system is available), plant declarations in paper form may be filed on a voluntary basis. APHIS states that "(n)o agencies with Lacey Act enforcement authority will bring prosecutions for failing to complete the paper declaration form before the electronic system. . . is available. . . ; however, any person who submits a form containing false information may be prosecuted."

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The second proposed enforcement phase would begin April 1, 2009 or as soon thereafter as an electronic filing system is available. During this phase APHIS intends to begin enforcing the plant declaration requirement for wood and certain wood products classified in Chapter 44 of the Harmonized Tariff Schedule (HTS), and certain live plants and related products classified in Chapter 6 of the HTS.

In the next proposed phase, beginning approximately July 1, 2009, enforcement would be expanded to apply to certain wood pulp (Chapter 47, HTS), paper and paper articles (Chapter 48), musical instruments (Chapter 92) and furniture (Chapter 94).

After September 30, 2009, APHIS proposes to phase in enforcement for additional HTS chapters containing products covered by the declaration requirement, including but not limited to the following.

HTS Chapter	Description
12	Oil seeds, misc. grain, seed fruit, plant, etc.
13	Gums, lacs, resins, vegetable saps, extracts, etc.
14	Vegetable plaiting materials and products not elsewhere specified or included
45	Cork and articles of cork
46	Basket ware and wickerwork
66	Umbrellas, walking sticks, riding crops
82	Tools
93	Guns
95	Toys, games and sporting equipment
96	Brooms, pencils and buttons
97	Works of art

A specific phase-in schedule for the chapters listed above will be announced in a future *Federal Register* notice.

Additional Information

Additional information regarding the Lacey Act amendments/plant declaration requirements is available on APHIS' website at: http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml. Parties who are interested in receiving e-mail from APHIS containing information updates as they become available can register for this service through the APHIS website.

CBP's website also includes information regarding the Lacey Act amendments at: http://www.cbp.gov/xp/cgov/trade/trade_programs/cargo_summary/laws/food_energy/amended_lacey_act/.

To search for scientific names using a product's common name or by other means, visit the USDA website at: <http://plants.usda.gov/index.html>.

We will continue to provide updates regarding this issue as more information becomes available.