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**INTERNATIONAL TRADE &
CUSTOMS UPDATE****New Lacey Act Reporting Rules Creating Headaches for Importers of Products Containing Wood/Plant Materials**

Last spring, the Food, Conservation and Energy Act of 2008, also known as the 2007 U.S. Farm Bill, became law. It contains amendments to the Lacey Act, a law established to protect wildlife through the regulation of trade. Few noticed at the time that these amendments introduced new reporting requirements for U.S. importers that carry significant civil and criminal sanctions if not followed.

Designed to combat illegal logging and the trade in products arising from it, the amendments require importers to file a declaration for any items containing wood or plant material. Because the “plant” definition in the Lacey Act amendments is so broad, the reporting requirement covers a vast range of products, forcing all importers to weigh whether or not they must prepare a report. This reporting burden has already triggered a lobbying effort to curb the amendments’ excesses before the first potential deadline of December 15, 2008.

“PLANT” DEFINITION

According to the Lacey Act amendments, “plant” means – with very few exceptions – any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and trees from either natural or planted forest stands. Under this definition, items containing wood or other plant material such as toys, umbrellas, musical instruments, sporting goods, printed matter, certain tools, chewing gum, wooden picture frames, paper (including products sold with paper manuals), decorative pieces, furniture and fabric products would be covered.

REPORTING REQUIREMENT

If a product is covered by the Lacey Act amendments’ definition of “plant,” the importer of that product must report, among other things:

- the scientific name of the plant;
- the value of the importation;
- the quantity of the “plant material”; and
- the country from which the plant was harvested (which may differ from the product’s country of origin).



Moreover, if the plant species is unknown or unclear, the importer must declare the name of each species that may have been used to make the product. If the product's plant species is common to more than one country and the country from which the plant was taken and used to make the product is unknown, the importer must provide the name of each country from which the plant may have been taken. Also, if a paper or paperboard product includes recycled content, then the percentage of recycled material in the product must be provided.

Products used exclusively as packaging material to support, protect or carry another item are not subject to this import declaration, unless the packaging material itself is the item being imported.

DEADLINES AND IMPLEMENTATION

The declaration requirement is scheduled to go into effect on December 15, 2008. Despite this deadline, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture recently announced, in an October 8, 2008 Federal Register notice, that U.S. Customs and Border Protection (CBP) is developing an electronic system to collect the declaration data, and that the declaration requirements will not be enforced until the system is operational, which should be by April 1, 2009. Between December 15, 2008 and the electronic system's completion date, however, the submission of paper declarations will be voluntary and any person who submits a form containing false information may be prosecuted.

APHIS is working with an interagency group consisting of the U.S. Forest Service, CBP, the Office of the U.S. Trade Representative, the U.S. Department of Justice, the U.S. Department of State, the U.S. Fish and Wildlife Service, the Council on Environmental Quality and the Department of Commerce to implement the Lacey Act amendment provisions. The implementation plan would phase in the reporting requirement as follows:

- After April 1, 2009, or as soon as the electronic reporting system is available, enforcement would begin for products classified under U.S. Harmonized Tariff Schedule (HTS) chapters 44 (wood and articles of wood) and 6 (live trees, plants, bulbs, cut flowers, ornamental foliage, etc.);
- After July 1, 2009, enforcement would begin for products classified under HTS chapters 47 (wood pulp), 48 (paper and articles of), 92 (musical instruments) and 94 (furniture); and
- After September 30, 2009, additional chapters of HTS would be included in the phase-in implementation plan, to be published in a Federal Register notice.

REQUEST FOR COMMENTS

APHIS announced that it will consider all comments regarding the Lacey Act amendments and the proposed implementation plan filed on or before December 8, 2008.



IMPORTERS' RESPONSE

Over the last few months, many importers have resorted to lobbying Congress to change the Lacey Act amendments and/or urging the enforcement agencies to more narrowly interpret them in an effort to reduce the reporting burden. For those U.S. companies importing significant volumes of product that currently may be captured by the amendments, it is recommended that similar efforts be waged, including responding to the APHIS invitation to comment between now and December 8, 2008.

FOR MORE INFORMATION

Please contact **Julia M. McCalmon** or any member of our **International Trade & Customs** practice group for more information.

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