

Congress Imposes Expansive New Requirements on Imports and Trade Related to Plants and Plant Products

On May 22, 2008, Congress aimed to curb illegal logging practices by amending the Lacey Act (“the Act”) to impose strict, new guidelines for importing plants and plant products.

The guidelines extend the protections of the Lacey Act, a statute making it unlawful to “import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant” obtained, transported, or sold in violation of any U.S. law, treaty, or regulation, to a broader range of plants and plant products.

A company violates the amended Act’s prohibition if the company imports, exports, transports, sells or receives any plant, part of a plant (including the seeds and roots) or product made from a plant that is illegally harvested under U.S. State law or any foreign law. The prohibition does not have a “*de minimis*” requirement, meaning even the slightest amount of prohibited plant product disqualifies a product from importation.

Additionally, the guidelines require any importing company to file a truthful declaration at the time of importation containing:

- the scientific name of any plant (including the genus and species) contained in the importation;
- a description of the value of the importation and the quantity (including the unit of measure) of the plant; and
- the plant’s country of origin (not necessarily the *imported item’s* country of origin).

Importers unaware of the particular species used in their product must include the name of each species that could be used to produce that product. If the

country of the plant product’s origin is unknown and the species commonly comes from more than one country, the importer must include the name of *each* country from which the plant may have originated.

If the product is made of recycled paper, the importer must include the average percentage of recycled content as well as the information regarding the non-recycled portion’s origin.

EXCLUSIONS

The Act only excludes plants that are:

- common cultivars (except trees) or food crops and products thereof;
- scientific specimens for research;
- to remain planted or be replanted; or
- used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

These exclusions only apply if the species do not appear in the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Endangered Species act of 1973, or a State Law specifically protecting that species.

Again, no “*de minimis*” exception exists regarding the declaration requirement. Any amount of any part of any plant triggers the need to report.

POTENTIAL IMPACT ON INDUSTRIES

The guidelines will obviously affect industries that primarily ship lumber, wood pulp, or paper. The scope of the declaration requirements, however, will also affect any industry that uses *any amount* of material derived from plants—products like furniture, resin,

chewing gum, cigarettes, boats, wine with corks, cars, musical instruments, textiles, pharmaceuticals, and virtually anything else that uses a label in shipping (as the label is arguably not part of the “packaging”). The guidelines likely will cause delays in importation or inadmissibility of products if a company incorrectly files the declaration. Further, an industry seeking accuracy in its declarations likely will be required to develop detailed and expensive tracking systems to follow a material from its country of origin to its final destination, and all points in between.

Additionally, companies that violate the Lacey Act may be subject to civil penalties up to \$10,000 per violation or criminal sanctions of up to \$20,000 in fines and/or up to five years imprisonment.

CURRENT STATUS AND TIMING

The prohibition against importing products of illegal logging is effective immediately, and the declaration rules are set to begin to apply on December 15, 2008. U.S. Customs and Border Protection and the United States Department of Justice have made it clear that they will consider the declaration rules voluntary and will not enforce them until April 1, 2009. At that point, the rules will be phased in (the phase-in method is still to be determined) until the requirements are fully implemented on January 1, 2010.

Many issues about the regulations remain unaddressed. These issues include defining “common cultivars” and “common food crops,” and deciding whether an exemption for packing material includes hang tags, address labels and paper instruction materials. Currently, Congress is forming a working group of congressional staff and stakeholders that will work out a guidance document and address any open issues related to the declaration requirement. The group hopes to resolve these issues before the April 1, 2009 implementation.

To review the regulations consult <http://www.cbp.gov> or <http://www.aphis.usda.gov>.

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