

## *Import/ Agricultural Regulation Alert*

### **APHIS (AN AGENCY OF USDA) AMENDS THE REGULATIONS FOR THE IMPORTATION OF WOOD PACKAGING MATERIALS**

The Animal and Plant Health Inspection Service (“APHIS”) of the United States Department of Agriculture (“USDA”) regulates unmanufactured wood packaging materials that are imported into the United States when used for the purpose of supporting or bracing cargo. See 7 C.F.R. Part 319.

On September 16, 2004, APHIS published a final rule announcing that it amended the regulations for the importation of wood packaging materials by adopting an international standard for phytosanitary measures entitled “Guidelines for Regulating Wood Packaging Material in International Trade” (“ISPM 15”).<sup>[1]</sup> September 16, 2005 is the effective date of implementation for the newly adopted regulations. On that day, the ISPM 15 regulations will become officially part of the APHIS regulations, found in 7 C.F.R. Part 319.

This Import/Agricultural Regulation Alert discusses the basics of ISPM 15 requirements, the United States process of implementation of ISPM 15, and the steps other countries have taken for implementation of the standard. ISPMs are prepared by the Secretariat of the International Plant Protection Convention (“IPPC”). The IPPC is an international treaty relating to plant health to which approximately 124 governments currently adhere. ISPM 15 describes phytosanitary

measures to reduce the risk of introduction and/or spread of quarantine pests associated with wood packaging material (including dunnage) made of coniferous and non-coniferous raw wood, in use in international trade. Over 110 countries, including the United States, are contracting parties to ISPM 15.

### **ISPM 15 - The Basic Rule**

Wood packaging materials may be imported into the United States under a General Permit and in accordance with the conditions that APHIS adopted from ISPM 15 and incorporated into 7 C.F.R. Part 319. ISPM 15 requires that wood packaging materials imported into the United States undergo the following processes to ensure the minimization or elimination of plant pest risks: (1) use of either a heat treatment or a chemical fumigation treatment on the wood packaging materials and (2) the use of a verifiable mark on the wood packaging materials confirming compliance with the regulations. There is no official deadline to which contracting countries must adhere for implementation of ISPM 15. Nevertheless, APHIS has set September 16, 2005 as the effective date for implementing ISPM 15.

### **Scope of the Rule**

- What type of wood materials are regulated? ISPM 15 applies to imported regulated wood packaging material, which includes unmanufactured wood or wood products for use with dunnage, crating, pallets, packing blocks, drums, cases, or skids.

- What are importers required to do? Importers must do the following:
  - Heat-treat the wood material or fumigate the wood material
  - If the heat-treatment is used: the wood core temperature must reach 56°C for 30 minutes; and the heat treatment must be done with kiln-drying, chemical pressure impregnation, steam, hot water, or dry heat
  - If the fumigation method is used: the wood material must be fumigated with methyl bromide; the methyl bromide must be used in an enclosed area for at least 16 hours; and upon fumigation, wood products must be aerated so that the concentration of the fumigant is below a hazardous level.
- Place a “mark” on the wood packaging material with the following characteristics:
  - a verification by the IPPC certifying that the wood packaging materials have been heat-treated or fumigated.
  - a unique graphic symbol
  - the ISO two-letter country code for the country that produced the wood packaging material
    - a unique number assigned by the national plant protection agency of that country to the producer of the wood packaging material
  - an abbreviation disclosing the type of treatment (e.g. HT for heat-treatment or MB for the methyl bromide fumigation)
  - the country code, the producer number, and the treatment type (HT or MB) ; and

- Import the treated and marked wood packaging material under a General Permit

### Materials Exempt from the ISPM 15 and Newly Adopted APHIS Regulations

Only regulated wood packaging materials as defined above are covered by the newly adopted regulations. The following wood materials are excluded from regulation under ISPM 15 and 7 C.F.R. Part 319:

- wood materials that are manufactured, loose, or less than 6 mm thick;
- some wood packaging materials that would normally be regulated are not subject to the marking requirements so long as such materials are in use by the Department of Defense to package nonregulated articles; and
- the following wood articles from Canada and the Mexican border states: firewood, mesquite wood for cooking, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes.

### AVAILABILITY OF INFORMATION

The amended regulations are available for public view in 7 C.F.R. Part 319, but will not become effective until September 16, 2005.

### COMPLIANCE BY OTHER COUNTRIES

To date, ISPM 15 has no official deadline to which contracting countries must adhere for official compliance. As such, the date of implementation varies among the contracting countries. Switzerland has passed legislation adopting ISPM 15 and started implementation on July 1, 2004. Similarly, Australia, New Zealand, India, and Canada have fully

implemented and are enforcing ISPM 15. However, wood packaging imported from the United States into Canada is exempt from treatment and marking.

South Africa will start implementing ISPM 15 on January 1, 2005. The EU has announced that all EU nations will implement ISPM 15 starting March 1, 2005. The Korean National Plant Quarantine Service has published its rule adopting ISPM 15. Korea intends for its regulation to go into effect June 1, 2005. Additionally, Mexico's import requirements for solid wood packaging will be implemented in July 2005.

The Chinese General Administration of Quality Supervision, Inspection and Quarantine (AQSI) has not decided when China will implement ISPM 15. Finally, Japan – although it had initially decided to implement ISPM 15 – is no longer considering ISPM 15 in the foreseeable future.

### ENFORCEMENT

Even if importers obtain a General Permit, the wood packaging materials will be barred from entry if they have not satisfied the treatment and marking requirements. For instance, an inspector at the port of first arrival may order the immediate reexport of regulated wood packaging material that is imported without the mark. Although wood packaging materials will be reexported when there is non-compliance, the actual cargo (that is braced or supported by the wood materials) will not be reexported because APHIS treats cargo and wood packaging materials as separate articles.

There are no penalties for non-compliance. Nevertheless, when materials are not in compliance, the importer bears the cost of shipping the wood materials back to the exporting

country as well as re-packaging the cargo. As noted above, U.S. importers have until September 16, 2005 to comply with the new APHIS regulations.

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