

Facts about the Amended U.S. Lacey Act

The Lacey Act (16 U.S.C 3371 *et seq.*) as amended makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of the United States, a U.S. State, or a foreign country. Regulations will be issued in 2009 to clarify exclusions from the Lacey Act prohibitions for common food crops and common cultivars.

As of May 22, 2008, if a tree is illegally harvested, made into wood products, and then exported to the United States, anyone who imported, exported, transported, sold, received, acquired, or purchased the wood products made from that illegal timber, who knew or should have known that the wood was illegal, may be prosecuted for violation of the Lacey Act.

The defendant need not be the one who violated the foreign or relevant Federal or State law; the plants or timber, and the products made from the illegal plants or timber, become "tainted" even if someone else commits the violation of foreign or Federal or State law. However, in order to be prosecuted, the defendant must have known, or in the exercise of due care should have known, that the wood was in some way illegal.

Illegal plants and plant products may also be seized and forfeited whether or not the person from whom they are seized knew of the illegal nature of the product. In any prosecution or forfeiture under the Lacey Act, the burden of proof of a violation rests on the U.S. Government; for cases relying on underlying violations of foreign law, prosecutions typically rely on cooperation with the country whose laws were violated.

The Lacey Act as amended also introduces the requirement for a "plant import declaration." The plant import declaration requires the scientific name of the plant (tree genus and species), quantity and value of the importation, and name of the country where the

timber was harvested. The plant import declaration does not require information on legality and does not require certification of any kind.

The plant import declaration is made by the importer. The declaration is not issued by a government agency.

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) and the other Federal agencies involved in enforcing the provisions in the Act are working together to phase in enforcement of the declaration requirement. A revised plan for phased enforcement of the plant import declaration requirement was published in the U.S. *Federal Register* on February 3, 2009.

Beginning April 1, 2009, or as soon thereafter as an electronic system is available to collect the information, the plant import declaration will be enforced for entry of goods as indicated in the schedule for phased-in enforcement. For the next 2 years, we propose to focus enforcement of the plant import declaration requirement on timber and wood products (see the detailed schedule in the February 3, 2009, *Federal Register* notice).

The plant import declaration requires information that will be critical in order for the U.S. Government to be able to successfully prosecute violations of the Lacey Act prohibitions and focus enforcement resources; in many cases, this information (species of wood and country of harvest) is readily available to importers. The declaration does not establish standards or require any type of certification as to the products' legality.

A copy of the declaration form is available now on the APHIS Web site at www.aphis.usda.gov/plant_health/lacey_act/index.shtml; however, we expect most importers will use the electronic system to file the declaration.

A product covered by the declaration requirement of the Lacey Act is subject to seizure and forfeiture if the declaration is inaccurate. An importer is subject to prosecution if aware that false statements are made on the declaration.

APHIS, working with other Federal agencies, will compile and review the information provided on the plant import declarations.

**Harmonized Tariff Schedule (HTS) Chapters
scheduled for enforcement of the plant import
declaration starting April 1, 2009 ***

| HTS Code | Brief Description |
|-----------------|------------------------------------|
| 4401 | Fuel wood |
| 4403 | Wood in the rough |
| 4404 | Hoopwood, poles, posts, stakes |
| 4406 | Railway and tramway sleepers |
| 4407 | Wood sawn or chipped lengthwise |
| 4408 | Sheets for veneering |
| 4409 | Wood continuously shaped |
| 4417 | Tools, tool handles, broom handles |
| 4418 | Builder's joinery |

* The starting date is subject to the availability of the electronic data collection system. Additional chapters are scheduled for enforcement starting October 1, 2009, and April 1, 2010. See 74 *Federal Register* 5911 (February 3, 2009) for details.

For the most current information on implementation of the amended Lacey Act, please visit the APHIS Web site at www.aphis.usda.gov/plant_health/lacey_act/index.shtml.

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