

## Lacey Act Amendments Update

*Beveridge & Diamond, P.C.*, March 9, 2009

The Lacey Act is a U.S. wildlife protection statute designed to combat illegal trafficking in wildlife, fish and certain plants. Recent amendments to the Lacey Act, aimed in part at curbing illegal logging, expand its protections to include any wild member of the plant kingdom (including trees from natural or planted forest stands), and any products made thereof. Thus provisions of this statute now apply to a broad range of plant products such as wood, pressed wood, furniture, wood pulp, paper and paperboard, books and printed materials, wood items, plant based resins, pharmaceuticals and textiles, among others.

The substantive prohibition on commerce in illegally sourced plants and plant products is in effect and enforceable now. In addition, new import declaration provisions were slated to take effect December 15, 2008; however, agencies with enforcement authority agreed not to begin enforcing the import declaration requirements until April 1, 2009.

### **Ban on Commerce in Illegally Sourced Plants and Plant Products; False Labeling**

The amended Lacey Act makes it unlawful, as of May 22, 2008, to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant or plant product that was illegally sourced from a U.S. state or tribal land or any foreign country. Illegally sourced plants may include trees or wild plants that were: (1) stolen; (2) taken from officially protected areas such as parks and reserves; (3) taken without or contrary to required authorization; (4) taken without payment of the applicable taxes, royalties or fees; or (5) shipped in violation of governing export or transshipment laws, such as log export bans. The Lacey Act also makes it unlawful to falsely identify or label any plant or plant product covered by the Act.

### **New Declaration Requirement for Imported Plants and Plant Products**

Additional provisions will make it unlawful to import covered plants and plant products without filing an import declaration. The declaration must include: (1) scientific names of all plant species; (2) country of harvest; (3) quantity (including unit of measure); and (4) value of imported plants or plant products. Under the statute, new import declaration provisions were slated to take effect December 15, 2008; however, prior to the availability

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of an electronic filing system (anticipated by April 1, 2009) the requirement to file a declaration will not be enforced. Until April 1, 2009, filing of the paper declaration form is voluntary.

If the plant species or country of origin cannot be determined conclusively for a plant product, the declaration must include a list of possible plant species found in the product and/or a list of each country from which the plant may have been harvested. Declarations for paper and paperboard products made of recycled content do not need to name the species and source of the recycled material. For these products, an importer is obligated to list the average percent of recycled content as well as species and origin information for any non-recycled plant material contained in the products. Packaging material used exclusively to support, protect, or carry another item will not require an import declaration, unless the packaging material itself is being imported.

### **1. Proposed Phase-In Schedule for Import Declaration Enforcement**

Although the substantive prohibitions on commerce in illegally sourced plant products is already in effect and enforceable, enforcement of the import declaration requirement will be phased in according to the following revised schedule (published in 73 Federal Register 5911- 5913):

Beginning on April 1, 2009, enforcement will begin for import declarations on specified wood and articles of wood from Chapter 44 of the Harmonized Tariff Schedule (HTS), including fuel wood (HTS 4401), wood in the rough (HTS 4403), wood poles, piles, or stakes (HTS 4404), railway sleepers (HTS 4406), wood sawn or chipped lengthwise (HTS 4407), wood sheets for veneering (HTS 4408), wood, continuously shaped (HTS 4409), tools, tool handles & broom handles (HTS 4417) and builders' joinery and carpentry of wood (HTS 4418).

Beginning approximately October 1, 2009, import declaration enforcement is anticipated with regard to wood pulp from HTS Chapter 47 and additional items from HTS Chapter 44 such as wood charcoal (HTS 4402), particleboard (HTS 4410), fiberboard (HTS 4411), plywood (HTS 4412), densified wood (HTS 4413), wooden frames (HTS 4414), packing cases, boxes, and crates that are not holding a separate product (HTS 4415), casks, barrels and vats (HTS 4416), wood table and kitchen items (HTS 4419), and wood marquetry (HTS 4420).

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On or after April 1, 2010, enforcement of the declaration requirement will be phased in for wooden furniture and furniture parts from Chapter 94 or the HTS, paper and paper articles from chapter 48 of the HTS, and articles of wood from HTS section 4421.

### Exemptions and Exclusions

As referenced above, packaging material used exclusively to support, protect, or carry another item will not require import certification, unless the packaging material itself is being imported. (Packaging material includes manuals, tags, labels and warranty cards.) Other items are excluded from the definition of plants, including (1) live plants or trees intended for replanting, unless listed on the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Endangered Species Act or a state endangered species list; (2) scientific specimens to be used only for research, unless they are listed as in item 1, above; and (3) common cultivars and food crops (to be defined via a joint rulemaking by USDA and the Department of the Interior).

### 2. Opportunities to Comment

APHIS is accepting public comments on the revised plan to phase in enforcement of the import declaration requirements until April 6, 2009. Opportunities to comment are also anticipated with regard to the joint rulemaking on common cultivar and common food crop definitions.

To view the amendments to the Lacey Act click here or go to:  
[http://www.aphis.usda.gov/plant\\_health/lacey\\_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf](http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf).

For additional information or guidance regarding the Lacey Act amendment, please contact Laura Duncan ([lduncan@bdlaw.com](mailto:lduncan@bdlaw.com)) or Paul Hagen ([phagen@bdlaw.com](mailto:phagen@bdlaw.com)).