

CONSENSUS STATEMENT OF IMPORTERS, NON-GOVERNMENTAL ORGANIZATIONS, AND DOMESTIC PRODUCERS ON LACEY ACT CLARIFICATIONS

Chapeau

We believe that the Lacey Act declaration requirement, if properly implemented, facilitates achieving the intent of the Lacey Act to curb trade in illegally harvested plants. The processes that companies put in place to determine the origin of their plant material for declaration purposes, as well as the data generated by the requirement, are tools that support compliance with and enforcement of the Lacey Act. The declaration requirement has the potential to ensure that businesses all along the supply chain – harvesting operations, manufacturers, brokers, importers, retailers – become a part of the solution to the problem through joint action.

We support swift implementation of the clarifications in this consensus statement, as well as the clarifications included in the Congressional letter dated October 10, 2008.¹ We pledge to work cooperatively to facilitate smooth implementation of the Lacey Act.

Blanket Declaration

Issue: In many instances, shippers may import the same products from the same sources on a regular basis, which, in some cases can total thousands of shipments a year. The identical declarations for these repeat importations add an administrative burden and cost on the agencies, importers, and customs brokers in filing and collecting the required import declaration under the Lacey Act without providing additional benefit for tracing the source of wood.

Proposed Solution: Qualified importers who regularly import the same plant product from the same sources may file a blanket Lacey Act declaration for each such product. Elements of the proposal include:

Application to Qualify for the Program: Importers will file an application with U.S. Customs and Border Protection (CBP) to request approval to participate in the Blanket Lacey Act Declaration Program. Such applications shall be amended if relevant information changes. There shall be no restriction based on size of the applicant or volume of imports. Applicants must meet the following criteria:

- * participate in Customs-Trade Partnership Against Terrorism (C-TPAT)
- * maintain a continuous bond
- * identify the products to the sixth digit of the Harmonized Tariff Schedule
- * identify the foreign supplier or suppliers (i.e. the foreign seller) of the product

¹ October 10, 2008 letter on implementation of the Lacey Act amendments addressed to Cindy Smith, Ralph Basham, Ronald Tenpas, and Dale Hall signed by Congressman Earl Blumenauer, Senator Ron Wyden, and Chairmen Nick Rahall, Tom Harkin, Charles Rangel and Max Baucus.

- * provide, throughout the duration of the blanket declaration, the estimated annual quantities, by quarter, of the product to be imported
- * identify the “deliver to party(ies)”
- * list the anticipated genus and species (or species groupings) and countries of origin of the plant

Blanket Lacey Act Declaration: Upon approval for the program, the importer may file a blanket declaration within 30 days following the end of each calendar year quarter for all shipments that contain a) the same products identified to the sixth digit of the Harmonized Tariff Schedule; b) the same country or countries of harvest; and c) the same range of genus and species. If a particular shipment contains any deviation from these three criteria, that shipment would not be eligible for inclusion in the blanket declaration and would require an individual declaration. The blanket declaration shall contain the same information required in a declaration for a single shipment.

The Blanket Lacey Act Declaration shall be filed by CD-ROM or in paper form to CBP at a central U.S. location, until such time as the blanket declaration can be filed electronically in the Automated Commercial Environment (ACE). The Automated Broker Interface (ABI) will include an automated flag on the entry to indicate that the importation is subject to the Blanket Lacey Act Declaration Program. The quarterly declaration shall provide specific information to include shipment dates and quantities.

Benefits: The program will provide an additional C-TPAT benefit and eliminate the need to file thousands of duplicate declarations for repetitive shipments by the same importer. At the same time, the aggregated data will provide more meaningful information on the importer’s supply chain than the entry-by-entry declarations.

Evaluation: CBP, Animal and Plant Health Inspection Service (APHIS) and the Department of Justice shall jointly conduct a review at the end of Phase IV to evaluate whether and how blanket declarations are facilitating the smooth implementation of the Lacey Act and achieving its intended goal of curbing illegal logging.

Species Groupings

Issue: The requirement to declare the specific genus and species can be complicated for some products. There can be multiple species in a genus that currently cannot be practically or accurately known. Meanwhile, identification of the wood to the genus level can often provide sufficient information for purposes of the declaration.

Proposed Solution: For purposes of the declaration, we support the definition and use of logically coherent groupings of plant species according to the current state of scientific knowledge and technical capacity. Such groupings should be to genus level (through use of “spp.”) unless otherwise specified. These groupings should be used only when it is not technically feasible, by reasonable and practical methods, to obtain and provide species-specific information.

Such groupings should be defined in a timely manner by the U.S. Forest Products Laboratory, with advisory input as necessary from academic institutions with expertise in plant taxonomy, timber trade associations, and civil society organizations. Until the date at which these species groupings are identified for purposes of the Lacey Act declaration, importers should seek guidance from existing sources such as the Forest Products Laboratory website's database of common names and the Integrated Taxonomic Information System or similar credible resources. Importers should not be penalized for use of "spp" in legitimate circumstances.

Recognizing that the state of scientific knowledge and technical capacity to differentiate between species in the forest and throughout the supply chain is constantly evolving, we recommend establishment of a formal process for occasional review and update of these groupings.

Composite Materials

Issue: Under current production methods, it is difficult, if not impossible, to declare the genus and species of wood used in certain composite products such as particle board or medium density fiberboard (MDF), because these products are often made from by-products left over from the manufacture and processing of other wood products. These products are often made from sawdust, scraps, and other remnants and one piece of MDF or particleboard may contain a broad spectrum as to the potential genus, species, and countries of origin.

Proposed Solution: We agree that declarations of particleboard (HTS 4410) and fiberboard (HTS 4411) should not be mandatory until appropriate administration agencies determine it is feasible and practical to collect the required information. Likewise, declaration of country of harvest or species for particleboard or fiberboard components of manufactured products within other HTS categories (e.g. Chapter 94) should not be mandatory until appropriate administration agencies determine it is feasible and practical to collect the required information. The same principle should apply to other equivalent engineered composite wood materials, defined as materials made of sawdust and/or wood scraps or other manufacturing byproducts, and glue or other binding agents.

Conversely, it is our understanding that products such as oriented strand board (OSB) are produced from wood flakes that are themselves derived from whole logs. Given the manufacturing process for OSB, we agree that declaration of OSB may be mandatory in the phase-in schedule, provided that sufficient advanced notice is provided to importers. In addition, plywood is currently scheduled to require a declaration on October 1, 2009. We agree that plywood may be subject to the declaration requirement, to the extent that it contains solid wood components. If a particular plywood product is comprised of both solid wood components and composite components, we agree that only the solid wood components would require a declaration of species (or species grouping) and country of harvest. The same methodology would apply to other types of products that contain both solid wood and composite material components.

A clarification that the Lacey Act declaration requirements currently apply only to “solid wood” components of products (as well as paper within Chapters 47 and 48) should be included in the notes of the HTS.

While it is currently not feasible or practical to subject composite materials to the Lacey Act declaration requirement, we recognize that composite materials constitute an important component of manufactured wood products. Accordingly, the Administration shall, in the future, consider the inclusion of composite materials in the declaration requirement in light of various factors, including advances in the feasibility and practicability of collecting the required information.

Addition of solid wood product categories to current and future phase-in schedule

Issue: As noted in the Congressional letter of October 10th, 2008, which all of our organizations supported, the principles of (1) illegal logging and the serious global environmental and economic consequences; and (2) an importer’s ability (or lack thereof) to accurately identify a plant or plant product and the country of origin of the plant or plant product, are both factors by which the phase-in schedule should be determined. However, the plant material within a variety of products not currently included within the declaration phase-in schedule has been demonstrated to be subject to risk of illegal origin. Moreover, there is a need to create a process to review products subject to the declaration requirement in a manner that is transparent, inclusive, well-defined and subject to appropriate timeframes.

Proposed Solution: We recognize that it is important that businesses within all types of plant product supply chains be encouraged to put processes in place to identify and trace basic information about source materials, as part of assuring compliance with the underlying legality requirements of the Lacey Act. We also recognize the challenges for compliance with the Lacey Act declaration requirement that arises as parties are further removed from the point of original harvest. We therefore clarify the intention that, for the duration of the current phase-in schedule, importers only need to declare the products and/or components thereof that are comprised of solid wood and, in specified cases, paper and paperboard.

In light of the dual principles for phase-in decisions (risk and importers’ ability to provide information), we recognize there are other products that often contain high-value endangered woods, such as foliage and branches, musical instruments, sporting equipment and additional furniture products. Importers support the inclusion in later phases of the phase-in schedule of additional such products in which the essential character is wood.

In the future, to facilitate the smooth implementation of the Lacey Act declaration requirement, we suggest adoption of the following principles for review of categories for the phase-in schedule:

- Beyond April 2010, declarations for imports of new products should not be mandatory sooner than one year after initial notice is given in the Federal Register;
- For additional products and phases added to the schedule, products made on or after the date of publication of the new phase in the Federal Register would require a declaration beginning on the effective date for that phase on the schedule. The date of manufacture for such products is the date of final assembly or process of the product to be imported;
- The government should use a positive listing approach based on periodic review of information regarding trade flows, including information submitted by all stakeholders;
- Both risk of illegal source and difficulty of identifying source material should be taken into account;
- It is not appropriate to cover all HTS categories within the phase-in schedule, and the question of additional product coverage should be considered during the statutorily required review, and in subsequent reviews.

We recognize that nongovernmental organizations have prioritized the following solid wood products and components from additional HTS categories for future iterations of the declaration phase-in:

- Ch. 6** (foliage and branches)
- Ch. 66** (umbrellas, walking sticks, riding crops)
- Ch. 82** (tools)
- Ch. 92** (musical instruments)
- Ch. 94** (furniture, prefabricated buildings)
- Ch. 95** (toys, games, & sporting equipment)
- Ch. 96** (brooms, pencils, buttons)
- Ch. 97** (works of art)

We further recognize that the products identified in these chapters in general are manufactured products with multiple components. We clarify the intention that importers would only need to declare the products and/or components thereof that are comprised of solid wood, until the Administration considers the inclusion of composite materials in the declaration requirement in light of various factors, including advances in the feasibility and practicability of collecting the required information.

Date of Manufacture

Issue: Before the new law was enacted, manufacturers were not required to collect information from their suppliers on the genus, species, country of origin, value and quantity of the plant material. For many reasons, it is not consistently possible for importers to retroactively determine the genus and species of wood used in goods that were produced before the Lacey Act amendments were enacted. First, the manufacturing process often begins well in advance of the date of importation and for plant material taken prior to implementation the manufacturer may not have the ability to gather the

declaration information. Second, it is not uncommon for manufacturers to import goods, parts and components or replacement parts months or years after the good was originally manufactured. Antiques are particularly problematic because, by definition, they were manufactured or created over a hundred years ago.

Proposed Solution: The Lacey Act amendments should be prospective only, and should not apply to any parts, components, or final products that were manufactured before the Lacey Act amendments were enacted. The date of manufacture for such products is the date of final assembly or process of the product to be imported.

Recycled wood products

Issue: The Lacey Act declaration requirement allows flexibility to declare the percentage of recycled paper content, but it does not allow the same flexibility for recycled wood content. It is very difficult if not impossible to trace the genus and species of wood used in many recycled products. In amending the Lacey Act, Congress did not intend to discourage efficient use of wood fiber. Use of recycled wood materials during the manufacturing process supports efficiency in the same way as using recycled paper and paperboard.

Proposed Solution: We support treating content composed of recycled or recovered *wood* products in the same manner as recycled or recovered *paper* products for purposes of the declaration requirement—that is by declaring the percent content. The issue should be included in the two-year study required by the amendments, and the government should study the implementation of this interpretation to prevent its exploitation for import of illegally harvested materials under the guise of reuse.

Appropriations for smooth implementation of the declaration requirement

It is important that Congress and the Administration direct sufficient resources to APHIS and CBP to ensure that the declaration requirement process, including necessary databases and interfaces, is finalized and implemented in a timely way.

SIGNED BY: