

Lacey Act Amendments of 2008

International Workshop on Policies on Trade in
Timber and Timber Products
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Environmental Crimes Section
Environment and Natural Resources Division,
U.S. Department of Justice

Background: The Lacey Act

- The nation's oldest wildlife protection statute
 - First enacted in 1900 to combat impact of:
 - hunting to supply commercial markets,
 - interstate shipment of unlawfully killed game,
 - introduction of harmful exotic species and
 - killing of birds for feather trade
 - Significantly amended in 1981 and 1988
- A tool to combat trafficking in “illegal” wildlife, fish or plants and products thereof
- Until recent amendments covered all wild animals, but plant defined to include only those both native to the United States and protected.

The Food, Conservation and Energy Act of 2008

- *Section 8204. Prevention of Illegal Logging Practices*
 - Expands Lacey protection to broader range of plants
 - New declaration requirement relating to plant products
- Passed May 22, 2008 (effective immediately)

The Lacey Act, as amended

- The Lacey Act, as amended, is an important new tool that will help the United States to minimize the U.S. market for illegal plants and support the efforts of other countries, and its own States, to combat illegal trade in plants, including particularly illegal logging.
- The Lacey Act now 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 a U.S. State, or most foreign laws.
- The Lacey Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant.
- It will be unlawful as of December 15, 2008 to import any covered plant or plant product without a declaration.

Examples of Illegal Logging:

- Theft of timber, including from parks and protected areas
- Harvesting without permission
- Failure to comply with harvesting regulations
- Failure to pay royalties, taxes or fees

The Lacey Act provides legal authority to take action when products associated with illegal logging enter the United States.

Definition of “plant”

- “Plant” means:
 - “Any wild member of the plant kingdom, including roots, seeds, parts or product thereof, and
 - Expressly including “trees from either natural or planted forest stands”

Exclusions

- Excluded from Lacey Act coverage
 - Common cultivars* (except trees)
 - Common food crops*
 - Scientific specimens for research
 - Plants to remain planted or be replanted

**U.S. Departments of the Interior and Agriculture are working together, with other agencies, to define these terms. An existing regulatory definition of “cultivar” states that it is a “horticulturally derived plant variety that has been selected for specific morphological, physiological or other characteristics such as color, or a large flower, or disease resistance.” 50 C.F.R. 23.5*

Exceptions to the Exclusions

- The Lacey Act nevertheless applies to scientific specimens for research and/or plants to remain planted or to be replanted, if the plant is listed in
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora
 - Endangered Species Act of 1973
 - Any State law that provides for the conservation of species...

New Declaration Requirement Relating to Plant Products

- Declaration must be made at time of importation
- Declaration must contain:
 - Scientific name of **plant** (including genus & species)
 - Value of importation
 - Quantity of the **plant**
 - Name of the country in which the **plant** was harvested
 - For paper and paperboard products with recycled content, state the average % recycled content without regard for species or country of harvest
- Declaration requirement does not apply to packaging material used to support, protect or carry another item (unless the packaging material itself is the item being imported)

What if Information is Unknown?

- If species varies and is unknown:
 - Declare the name of each species that may have been used to produce the product
- If the species is commonly harvested in more than one country, and the country is unknown:
 - Declare the name of each country from which the plant may have been harvested

Phased-in Declaration Requirement

- We have proposing phased-in enforcement of the declaration requirement, as described in October 8, 2008 Federal Register notice.
- In the initial phase (starting December 15th), the declaration would be voluntary; however, the truthfulness of any declaration is immediately enforceable.
- Phased-in enforcement of the declaration requirement will begin when forms can be collected electronically.
- Importers need to be prepared to comply with the declaration requirement by the dates stipulated in the Federal Register Notice.

Proposed Phase-In Schedule of Enforcement of the Declaration Requirement for Goods of, or containing, Plants or Plant Products* (Specific goods may be exempt**.)

I present – March 2009	II April 1, 2009 (or as soon thereafter as an electronic system is available)	III July 1, 2009 (approximate)
PPQ Plant Import Declaration Form will be available on website, and accepted after Dec 15 Domestic & International Outreach	HTS Chapters: Ch. 44 (wood & articles of wood) Ch. 6 (live trees, plants, bulbs, cut flowers, ornamental foliage, etc.)	HTS Chapters: Ch. 47 (wood pulp) Ch. 48 (paper & articles of) Ch. 92 (musical instruments) Ch. 94 (furniture) PLUS PHASE II

NOTE: Chapter descriptions are for ease of reference only.

* Declaration requirement is effective as of Dec.15, 2008. All declarations submitted must be accurate; false statements are enforceable. Failure to submit a declaration will not be prosecuted and customs clearance will not be denied for lack of a declaration until after the phase-in date above.

** Example: In HTS Ch. 6, most live plants not listed under CITES, the ESA or certain State laws would be exempt from this declaration requirement. See the Lacey Act regarding further exemptions.

Current Status of Implementation

- May 22, 2008: Effective date of new provisions
- Dec.15, 2008: Declaration requirement effective by Statute
- Reporting methodology is being developed
 - Declaration and instructions will be available prior to Dec. 15th
 - An electronic filing process is planned, targeted for late April 2009
- Definitions of "common cultivars" and "common food crops" will be provided via rulemaking anticipated in the next month or two
- Extensive national and international outreach ongoing

Lacey Act Violations and Penalties

- Felonies punishable by 5 years in prison and a \$250,000 fine (\$500,000 for corporations)
 - Knowing violation – knowledge of facts and illegality, not specific law violated
 - Involves import or export or commercial conduct with plant value of more than \$350
- Misdemeanors punishable by 1 year in prison and a fine of \$100,000 (\$200,000 for corporations)
 - In the exercise of due care should have known plant was illegally taken, possessed, transported or sold – due care can be demonstrated numerous ways and certification programs, VPAs, etc. all may be considered depending on the circumstances
 - Or knew, but did not involve import or export or commercial conduct with plant value of more than \$350
- Forfeiture – strict liability

LACEY ACT BASICS

- **The underlying foreign law violation does not have to be a criminal violation, nor one actively enforced in the foreign country.**
- **The underlying violation need not be committed by the person charged with violating the Lacey Act – a third party might have taken the product illegally.**
- **U.S. v. Lee**
- **U.S. v. Bengis**
- **U.S. v. McNab**

POTENTIALLY RELEVANT U.S. STATUTES

- ALL PLANTS

- Customs Laws:

- Class E felonies: 18 U.S.C. 541 (entry of falsely classified goods) – 2 years, \$250,000/\$500,000; 542 (entry of goods by means of false statement) – 2 years, \$250,000/\$500,000; 545 (importation contrary to law) - 5 years, \$250,000/\$500,000

- False statements, 18 U.S.C. 1001 – Class D felony (5 years, \$250,000/\$500,000, or twice the gross gain or loss)

- Conspiracy, 18 U.S.C. 371 - Class D felony (5 years, \$250,000/\$500,000, or twice the gross gain or loss)

- Money Laundering, 18 U.S.C. 1956, 1957 – Class C felonies (20 years \$500,000; 10 years, \$250,000 respectively)

- Plant Protection Act, 7 U.S.C. 7734 - Class A misdemeanor (1 year, \$100,000 or twice the gross gain or loss)

- Lacey Act, 16 U.S.C. 3372, 3373

- Class D felony (5 years, \$250,000, or twice the gross gain or loss)
 - Class A misdemeanor (reasonably should have known) (1 year, \$100,000, or twice the gross gain or loss)

- CITES/ESA LISTED PLANTS

- Endangered Species Act, 16 U.S.C. 1538, 1540

- Class A misdemeanor (1 year, \$100,000/\$200,000, or twice the gross gain or loss)
 - Class B misdemeanor (6 months, \$25,000/\$25,000, or twice the gross gain or loss)

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- **These are only some of the major statutes likely to be implicated in a timber trade case; particular fact patterns may bring to play additional statutes such as those related to obstruction of justice.

All United States statutes can be found at <http://www.access.gpo.gov/uscode>

All United States regulations can be found at <http://www.gpoaccess.gov/cfr/index.html>

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Information on the Internet

www.aphis.usda.gov/plant_health/lacey_act

www.cbp.gov

To look up genus/species, go to:

<http://plants.usda.gov/classification.html>