

Client Advisory

October 13, 2008

U.S. Department of Agriculture Proposes Phased-In Schedule to Enforcement of Revised Lacey Act Declaration Requirements

On October 8, 2008, the Animal and Plant Health Inspection Service (“APHIS”), an agency of the U.S. Department of Agriculture, published a Federal Register notice proposing the implementation of the declaration requirements instituted by recent amendments to the Lacey Act. The Lacey Act, which dates back to 1900 and was designed to combat trafficking in “illegal” wildlife, fish and plants, was significantly expanded as part of the 2008 Farm Bill.

Under the revised Lacey Act, it will be unlawful to import plants or products incorporating plant material after December 15, 2008, without an import declaration. The declaration must be submitted upon entry, and it must contain, among other things, the scientific name of the plant, the value of the importation, the quantity of the plant, and the name of the country from which the plant was harvested. Violations of the Lacey Act provisions, including the import declaration requirement, may be punished by civil or criminal penalties, or by forfeiture of the merchandise.

In the Federal Register notice, APHIS has proposed a phased-in approach to enforcement of the Lacey Act provisions. On December 15, 2008, the declaration requirements are scheduled to take effect. Initially, APHIS will publish a PPQ Plant Import Declaration Form for importers to complete **on a voluntary basis**. No agencies authorized to enforce the Lacey Act will bring prosecutions or forfeiture actions for failure to complete the import declaration from December 15, 2008, until April 1, 2009. However, any person who submits a form that contains false information may be prosecuted.

On April 1, 2009, APHIS believes that U.S. Customs and Border Protection (“CBP”) will have completed the means to enter and submit electronically the required data in the import declaration. On this date, or as soon thereafter as CBP makes the electronic system available, APHIS will begin enforcement of the declaration for imports of wood and articles of wood under Harmonized Tariff Schedule (“HTS”) Chapter 44, and for imports of live trees, plants, bulbs, cut flowers, ornamental foliage and related items under Chapter 6.

From April 1, 2009, through September 30, 2009, APHIS intends to phase in enforcement of the import declarations to cover imports under additional HTS Chapters. On or around July 1, 2009, APHIS will begin enforcement of the declaration for imports of wood pulp under Chapter 47, paper and articles of paper under Chapter 48, musical instruments under Chapter 92, and furniture under Chapter 93.

On or around September 30, 2009, APHIS will begin enforcing the import declaration for additional HTS chapters, including (but not limited to) the following: Chapter 12 (oil seeds, misc. grain, seed, fruit, medicinal plants, etc.), Chapter 13 (gums, lacs, resins, vegetable saps, extracts, etc.), Chapter 14 (vegetable plaiting materials and products not elsewhere specified or included), Chapter 45 (cork and articles of cork), Chapter 46 (basket ware and wickerwork), Chapter 66 (umbrellas, walking sticks, riding crops), Chapter 82 (tools), Chapter 93 (guns), Chapter 95 (toys, games and sporting equipment), Chapter 96 (brooms, pencils, and buttons), and Chapter 97 (works of art). The specific phase-in schedule for these and other HTS Chapters will be the subject of a subsequent Federal Register notice.

APHIS is soliciting comments from interested parties regarding the proposed implementation plan described above. Parties must submit comments by December 8, 2008.

If you have any questions about how the Lacey Act revisions may affect your business, or if you would like assistance in submitting a response to APHIS within the comment period, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys listed below.

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