

Coalition of New England Companies For Trade

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Additional Import Requirements under the Lacey Act

When Congress passed the *Food, Conservation and Energy Act of 2008*, it included a provision that amends the Lacey Act to broaden the definition of "plant" to include trees and products that come from trees, and requires additional reporting for imports of these products. While many of the products subject to the reporting requirements of this new law include items clearly made out of wood and articles of wood, such as wood flooring and furniture, the law also potentially covers a wide range of products that are less obvious, including some footwear and apparel, wine with corks; pots and pans with wooden handles; musical instruments; pharmaceutical products; lipstick (made in part from wax from carob tree); dried soup (that contains cellulose, which is a major component of wood); and hairspray (that is made in part from tree resins) just to name a few.

What is the Lacey Act?

The Lacey Act prohibits trade in wildlife, fish and plants that have been illegally taken, possessed, transported or sold. The Lacey Act amendments makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant (including trees) or *product thereof* taken in violation of the laws of a U.S. state or any foreign law that protects plants.

What are the new Lacey Act reporting requirements?

The Lacey Act amendments require that import declarations state the scientific name of any plant (including genus and species) used to produce the plant product and the country of origin of the plant. If the genus and species is not known, then the declaration must contain the name of every species of plant that may have been used to produce the plant product; and if the country from which the plant was taken and used to produce the imported plant product is unknown, the name of every country from which the plant may have been taken must be stated. Packaging material that supports, protects, or carries another item is exempted from these reporting requirements, unless the packaging material itself is the item being imported.

This new law has the potential to significantly impede international trade

It is clear that Congress did not understand the full economic impact at the time of its consideration and enactment. While the new law specifically excludes "common food crops" and "common cultivars", it requires an import declaration for any other product containing any amount of plant material, thereby covering 85 out of the 97 chapters in the Harmonized Tariff Schedule.

What is the trade community doing to minimize the impact of this new law?

A broad-based industry coalition has come together to work with Congress and the Executive Branch agencies tasked with implementing this new law in order to minimize the impact on international trade. Enforcement of the reporting requirements was delayed until US Customs and Border Protection (CBP) can receive import declarations electronically (but no earlier than April 1, 2009), at which time the reporting requirements will be phased-in under a schedule developed by the Executive Branch agencies tasked with implementing this new law (with USDA in the lead) in consultation with Congress and the international trade community.