

# Current Trade Initiatives

From the NCBFAA Perspective



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# Lacey Act Requirements



- Lacey Act – Oldest Wildlife Protection Statute
  - Enacted in 1900, amended in 1981, and 2008
  - 2008 Amendment was a Surprise
- Intended to Prevent Illegally Harvested Lumber and Goods Made of this Lumber
- To Ensure Compliance Make Sure:
  - The goods were obtained legally
  - Shipments documents are complete and accurate
  - Shipments are declared properly



# When is the Declaration Required?



- Declarations Required:
  - Formal consumption entries
- Declaration Not Enforced at This Time:
  - Informal consumption entries (19 CFR 143.21)
  - personal importations
  - mail entries (not requiring formal entry)
  - entries for transportation under bond (IT, IE and T&E)
  - carnets
  - FTZ admissions and warehouse entries
  - Temporary Imports under Bond (TIB)



# When is the Declaration Required?



- Currently only sections of the HTS Chapters 44, 47, and 94 are scheduled to require declaration
- Plants and plant products used exclusively as packing material to support, carry, or protect another item
- “Common Cultivars” and “Common Food Products”
- Plants for Planting



# How to File Declarations



- Paper Based Filings
  - Sent directly to the USDA / APHIS
  - Not submitted to CBP in Release Declarations
- Automated Reporting through ABI
  - PG Record Sets
  - Replace existing OGA records
  - Mandatory for transmission of the Lacey Act elements
  - Programmed from the requirements laid out on the PPQ505 form.



# Information to be Filed



- Data Elements
  - Many of the data elements that relate to the APHIS form PPQ 505 are already captured by current transactions
  - Captured Data Elements at the Entry Level
    - Estimated Date of Arrival
    - Entry Number
    - Bill of Lading
    - Importer Name/Address
    - Consignee Name/Address
    - MID
    - Tariff Level Description (OI Record)
    - HTS Number



# Information to be Filed



- New Elements Collected
  - Container Number
    - If no container number, leave blank
  - Intended Use
    - This is required on the PPQ form and can be found under instruction #10
      - “Enter the name of the plant or plant product and its use”
    - Not required at this time
  - Entered Value
  - Article or Component of Article
  - Plant Scientific Name
  - Country of Harvest
  - Quantity of Plant Material/Unit of Measure
  - % Recycled Material



# Compliance Concerns



- 16 USC 3371(f): unlawful to import any plant without the declaration
  - Will goods be denied entry without the declaration?
  - Can CBP demand redelivery if goods were released without the declaration?
- 16 USC 3371(d): unlawful to submit any false record or false identification of any plant imported or exported
  - If you file the declaration, make sure it is accurate
  - Obtain indemnity from company supplying the plant identification?
- 16 USC 3373(a) civil penalties of \$10,000
  - knowingly submitting false label or record, or knowingly failing to file the plant import declaration
  - importing fish, wildlife or plants having reason to know they were taken in violation of US or foreign law





# Compliance Concerns



- 16 USC 3373(d) criminal penalties
  - 5yrs imprisonment and up to \$500,000 fine
  - knowingly submitting false label or record, or knowingly failing to file the plant import declaration
- 16 USC 3374 Forfeiture
  - all fish, wildlife or plants imported, exported, . . . Contrary to Sec. 3372 or any regulation there under is subject to forfeiture
  - could include plants imported without the plant declaration
- In addition to the current 19 USC Penalties and Regulations



# ACE ESAR Roll Out



- ESAR A2.2 will be deployed through a phased rollout
  - A Federal Register Notice was published August 26, 2008 asking for trade volunteers
  - Trade volunteers and the ports where they will be filing were identified
- Phase 1: A pilot of four field office ports with volunteer trade participants in April 2009
  - The pilot ports consist of Buffalo, Chicago, Laredo, and Long Beach
  - Entry summaries may be filed by the volunteer trade participants beginning in April 2009 at the above ports as part of the pilot



# Declaration Filing Abilities



- Importers, Brokers, Carriers and Filers
  - will be able to submit Declarations,
  - associated at the account level
  - May be viewed nationally by CBP
- Type of Declarations
  - Affidavit of Manufacturer
  - Importer Certifying Statement
  - North American Free Trade Agreement (NAFTA) Certificate of Origin
  - Non-reimbursement Blanket Statement (Anti-Dumping / Countervailing Duty (AD/CVD))



# CBP Forms 28, 29 and 4647



- CBP Forms 28 (Request for Information), 29 (Notice of Action) and 4647 (Notice to Mark and/or Notice to Redeliver) will be created by CBP and stored in a National Database
- CBP can mail and post to Trade's ACE Portal
- Trade Portal Users can select their preferred method of communication via the Portal (mail, Portal or both)
- CBP Forms 28, 29, & 4647 will be posted to the Trade's Task List
- Trade Portal Users can interactively respond to the form and attach/upload documents in response to CBP via the Portal



# Two Exciting Documents



- **ACE Entry Summary Filing Instructions**

- More robust than the existing CBP Form 7501 instructions.
- Only pertains to transmitting data elements needed for type 01 and 11 entry summaries.
- Contains links within the document to more detailed sources of information impacting summary filing.



# Two Exciting Documents



## • **Business Rules and Process Document**

- Internal (CBP) and external (trade) versions addressing processing from each perspective.
- Process flow and business rules surrounding the ACE entry summary.
- Should serve to demystify what is occurring systemically in ACE pertaining to entry summary.
- Provides transparency.



# The End Lacey Act and ACE ESAR

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