



April 5, 2009

Ms. Cindy Smith
Administrator, Animal and Plant Health Inspection Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

RE: Comment Letter on Docket APHIS-2008-0119
Implementation of Revised Lacey Act Provisions

Dear Ms. Smith:

The International Wood Products Association (IWPA) is providing the following written comments in response to the February 3, 2009, Federal Register Notice on Implementation of Revised Lacey Act Provisions.

IWPA appreciates the opportunity to provide comments to APHIS on this rule. IWPA members are committed to sourcing legal, sustainable wood products. Our comments address the complexities that are unique to the trade of wood products in a global supply chain. The processes, procurement, logistics and manufacturing of wood products are not comparable to that of other industries regulated under the Lacey Act. It is within industry's best interest to help fashion effective implementation of the regulation. We offer these comments in the spirit of cooperation and support.

- Delay of declaration requirement for composite wood products including: particleboard, fiberboard, plywood, veneered panels, engineered wood flooring until the Congressionally mandated review could address the question of whether and how composite materials could be subject to the Lacey Act declaration requirement in the future. The aforementioned products are constructed with a mixture of several kinds of plant material, from various countries. Hardwood plywood is significantly more complex than other engineered products such as MDF and particleboard because hardwood plywood construction may include core materials of MDF, particleboard, veneer, or combination of all of the above.
- Allow the use of *spp* instead of specific identification of species. Unless conducting wood identification on each shipment, it is nearly impossible to identify a species contained in the shipment with great certainty. This scenario causes an importer to list all the species that may be included and opening them up to the potential for unintentional mistakes on the declaration. For example, according to the Center for Wood Anatomy Research,

USDA Forest Service, oak consists of 275 to 500 species and “Species within each group look alike microscopically.” The same can be said for numerous tropical species.

We note that a sample declaration distributed by APHIS also uses a *spp* designation. In particular, the classification of plywood by genus and species is extremely difficult as evidenced by the many hearings before the U.S. International Trade Court where the U.S. government has accepted that the common and commercial meaning of certain species designations also includes other closely related woods that are virtually indistinguishable in veneer form.

- Issue a guidance statement to organizations and individuals who employ “tipster” tactics as a harassment tool against the imported wood products supply chain. IWPA has already received numerous reports of supply chain members being harassed by “anonymous” sources that they will be exposed as criminals to the media unless they cease doing business in tropical wood products. This has the potential to greatly disrupt the legal trade that is so important for U.S. manufacturers and consumers.

There have also been incidents of where non-governmental organizations are suggesting that Lacey makes certification programs mandatory and is the only tool available to avoid investigations and prosecution. Industry is making sincere efforts to meet the letter and spirit of the Lacey Act amendments.

We need a solid statement by the agencies on what options in addition to certification by a third-party constitutes due care and confirmation as to how the government will handle unsubstantiated assertions.

- Protect business information. Information collected on the declaration form is considered sensitive and proprietary by importers, the disclosure of which would likely cause harm to the commercial interests of the businesses involved. We ask for an exemption of the Freedom of Information Act, which authorizes the withholding of “trade secrets and commercial or financial information obtained from a person and privileged or confidential to protect against such commercial harm.” Only certain aggregate information collected from the declarations should be available to the public.
- Create drop down menu for genus/species database. The APHIS Website has a searchable database that should be linked to the electronic filing form and updated with new species information obtained from the tremendous volume of declarations received.
- Publish and update a list of foreign country laws that the United States intends to enforce under the Lacey Act amendments.
- Apply the declaration requirement to U.S. plant exports. Many imported wood products use U.S. species (e.g. furniture, flooring, plywood). Applying the declaration to exports would not add any significant burden to legal exporters but would ensure the ability of importers to fully complete an import declaration and ensure full compliance with the principle of national treatment within the World Trade Organization agreement

IWPA appreciates the opportunity to provide comments to APHIS on the Lacey Act plant import provisions. Please contact us for any additional information.

Sincerely,

Brigid Shea

Brigid M. Shea
Manager, Government Relations