

Lacey Act Phase IV begins on April 1, 2010

2009/10/05

The enforcement of Lacey Act [Phase III](#) took effect on October 1st. However, it is not too early to start the research to determine if your products will be affected by Lacey Act Phase IV. This enforcement date is scheduled for April 1st, 2010.

The "Food, Conservation, and Energy Act of 2008" (a.k.a. the Farm Bill) made significant amendments to the Lacey Act, a 1900 law that banned the transport of wildlife caught illegally in foreign countries. These changes make it unlawful to import illegally obtained plants and plant products, and require an import declaration.

The Animal and Plant Health Inspection Service (APHIS) declaration requirements of the Lacey Act became effective on December 15, 2008. Enforcement began April 1, 2009, with a staggered phase-in period based on the Harmonized Tariff Schedule (HTS) number associated with the imported article.

What's next?

Phase IV enforcement is scheduled to begin on April 1, 2010, and includes the following HTS headings (*newly added to the schedule):

- Ch. 44 (Wood & Articles of Wood)
-4421 (other articles of wood)
- Ch. 66 (Umbrellas, Walking Sticks, Riding Crops)
-6602 (walking sticks, whips, crops)*
- Ch. 82 (Tools, Implements)
-8201 (hand tools)*
- Ch. 92 (Musical Instruments)
-9201 (pianos)*
-9202 (other stringed instruments)*
- Ch. 93 (Arms and Ammunition)
-9302 (revolvers and pistols)*
-9305.10.20 (parts and accessories for revolvers and pistols)*
- Ch. 94 (Furniture, etc)
-9401.69 (seats with wood frames)
- Ch. 95 (Toys, Games, & Sporting Equipment)
9504.20 (articles and accessories for billiards)*
- Ch. 97 (Works of Art)
9703 (sculptures) *

The enforcement of Phase IV is limited to goods composed of wood/plant material. APHIS advises it recognizes many of the headings listed in phase IV of the phase-in schedule contain goods that are not composed of wood or other plant material. APHIS has clarified a declaration is not required for products that have no wood or other plant content. (e.g. both metal hammers and hammers with wooden handles are included in HTS Chapter 82. However, only the hammers with wooden handles would require a declaration as of April 1, 2010.)

Imports of plant products classified under the above noted HTS "headings" (as well as those in Phases II and III) must be accompanied by the import declaration. This declaration must contain the scientific name of the plant, the value of the importation, the quantity of the plant and the name of the country in which the plant was harvested. For paper and paperboard products containing recycled content the declaration must also include the average percent of recycled content regardless of species or country of harvest.

Items removed from the Phase IV enforcement date include all paper and paper products of HTS Chapter 48. Also removed from the list of Phase IV enforcement date items are items of HTS headings:

- 9403.30 (wooden office furniture)
- 9403.40 (wooden kitchen furniture)
- 9403.50 (wooden bedroom furniture)
- 9403.60 (other wooden furniture)
- 9403.9070 (wooden furniture parts)

APHIS has decided to further delay enforcement of the declaration for composite and recycled or reused materials (e.g., medium density fiberboard, particleboard, and scrap wood) to the genus and/or species level. APHIS has agreed with trade community comments contending that identifying this information would be difficult and in some cases impossible for such products.

APHIS is currently proposing to begin enforcing the declaration for those products no earlier than September 1, 2010. This delay in enforcement of the declaration requirement will allow the government more time to evaluate options for enforcing the declaration for these goods.

In order to import plant products that fall under the scope of the declaration requirement, the importer must declare this information. However, the declaration requirement does provide that when the species of plant used to produce an imported plant product varies, and the exact species used to produce the plant product is unknown, the declaration should contain the name of **each species** of plant **that may have been used** to produce the plant product. In addition, when the species of plant used to produce an imported plant product is commonly taken from more than one country, and the exact country from which the plant was taken and used to produce the product is unknown, the declaration shall contain the name of each country from which the plant **may have been taken**.

APHIS states that in circumstances where the list of possible species in a particular product includes **all species** in a genus, it is acceptable to use "spp." (which is the plural of species) following the genus name on the import declaration form.

However, when reference to all possible species in a genus is not accurate (based on geographical or other factors), importers are expected to provide either the single genus and species, or a specific list on the import declaration form of all possible species that may have been used to produce the plant product.

Importers that would like their customs broker to file electronic Lacey Act declarations should provide the additional data elements along with the normal customs clearance documents. Importers may provide the information on the [PPQ Form 505](#) or, on or attached to their import invoice. Information being provided for a specific shipment should be included with the paperwork sent to the broker for that transaction.

Shipments not in compliance with the law may be refused entry. As with any other customs entry requirement violation, these enforcement decisions are made on a case-by-case basis.