

## Legislative Update: Lacey Amendment\*

Any THA member who imports products made with plant material need to be concerned about far-reaching new legal provisions that could result in significant new reporting requirements.

**What:** The 2008 Farm Bill (H.R. 6124) contains language that amends the Lacey Act (a law preventing trafficking in protected flora and fauna originally passed in 1900)

### Products That Could Be Impacted

While final regulations have not been written or issued, it appears that this amended Lacey Act will impact far more than illegally harvested timber, as it previously did. In fact, if the law is interpreted as broadly as it is written – which seems to be the current intent by the Administration interagency team -- it could affect products containing:

1. Soft- and hardwood products of all kinds
2. Cotton fibers & fabrics
3. Cellulose fibers & fabrics
4. Rayon
5. Wood pulp
6. Bamboo
7. Paper products of all kinds
8. Wood resins used in food, beverage, and pharmaceutical products

### New Provisions of the Lacey Act

The amended Lacey Act now contains reporting requirements that requires importers to declare all plant and plant products – including wood, pulp and bamboo-based products. The law mandates these new reporting requirements are set to go into **effect on December 15, 2008**. At this time, U.S. Federal agencies have not issued guidance or regulations that will be used to run this program, but the interagency process on interpreting the law and establishing regulations and requirements has begun. Further, the law mandates that Customs collect this information electronically – but Customs has indicated it does not have the capability or funding to do so at this time, so for the foreseeable future reporting will be paper-based.

Administration officials are looking at a phased enforcement of the import declaration requirement. Although the import declaration is effective December 15, 2008, the Administration will not begin to **enforce this requirement until April 1, 2009**. The period from December 15, 2008 to April 1, 2009 will be an “education period.” Beginning April 1, 2009, enforcement will begin for a limited group of products.

## **Current Reporting Requirements**

1. Declare the genus/species (using proper Latin, please) of the plant/plants used in the imported product
2. Provide value of the import
3. Provide quantity of the import
4. Provide origin(s) of the plant/plants in the product

If more than one plant species are contained in the product, the reporting requirements are that the importer must declare every species. Ditto if there are multiple countries of origin of a specie(s) – importer must declare all countries of origin. Further, the importer has the burden of knowledge of origin and makeup of the plant(s) in the product -- if not specifically aware, importer must declare all “potential” genus/species and countries of origin.

## **Current Exemptions in the Lacey Act**

“Packaging materials” made of plant materials, including paper, cardboard and wood pallets, are exempted under these changes to the Lacey Act unless it is the actual product being imported, but it is unclear how far “packaging materials” will be defined in the final regulations. Also excluded are “common cultivars other than trees” and “common crops” – but there are no definitions as to what defines a “common cultivar” or “crop.”

## **THA Action Steps to Date:**

- THA Board of Directors has adopted the following position on October 3, 2008:

***While recognizing the important environmental objectives of the Lacey Act amendment, the Association supports such clarifications or changes to the amendment through new legislation or the implementation process as may be necessary to provide certainty to the industry and to ensure, to the greatest extent possible, that legwear manufacturers, suppliers and distributors are not required to file declarations described in the amendment for imported products containing rayon, cotton, corn bamboo and plant products.***

- THA has joined a coalition which includes the National Retail Federation (NRF), National Association of Manufacturers (NAM), American Apparel and Footwear Organization (AAFA) among others.
- The Coalition has a strong strategy to influence the implementation process to the extent possible this year, but NRF lobbyists admit that new legislation may be required to achieve the full objective in the coming year. While the Coalition has a clear and aggressive plan in place, it is unclear to what extent this will be successful.
- Subsequent meetings have been held with US Customs and Border Control and a meeting scheduled Friday, October 10<sup>th</sup> with Department of Justice (members of coalition attend)
- THA is gathering a list of wood based products that are included in hosiery product imports (with help of Dan St. Louis) to include in coalition’s list

- Copies of a USDA Animal and Plant Health Inspection Service (APHIS) notice, *Federal Register on Implementation of Revised Lacey Act Provisions* are posted on the Legislative/Regulatory section of THA's member website, [www.hosieryassociation.com](http://www.hosieryassociation.com). There will be a 60-day comment period on the FR notice. The notice also announces a public workshop on **October 14** from 10-12 in the Jefferson Auditorium, South Agriculture Building, U.S. Department of Agriculture, 400 Independence Avenue SW., Washington, DC. **The scope currently includes textiles.**

#### **Proposed Phase-in Period in FR Notice:**

- Phase I - Present - March 2009 - voluntary PPQ Plant Import Declaration Form will be available on Web site, and accepted after Dec. 15, 2008.
- Phase II - April 1, 2009 (or when electronic system is available) - import declaration required for HTS Chapters: 44 (wood & articles of wood) and 6 (live trees, plants, bulbs, cut flowers, ornamental foliage, etc.)
- Phase III - July 1, 2009 (approximate) - import declaration required for HTS Chapters: 47 (wood pulp) 48 (paper & articles of) 92 (musical instruments) 94 (furniture) Plus chapters included in Phase II
- After September 30, 2009 agencies will phase in enforcement of the declaration requirements for additional chapters containing plants and plant products covered by the Lacey Act. A follow up FR notice will be published with this schedule.

#### **Nothing known on textiles specifically at this time regarding a phase in.**

- Letter draft from Congress to Administration on Lacey Act also posted on member section of THA website.
- NAM had briefing on October 15<sup>th</sup> (day after workshop) to discuss next steps
- THA plans to conduct educational webinar(s) and/or seminar(s) to help membership understand what may be required under this new law.
- Lacey Act website: [http://www.aphis.usda.gov/plant\\_health/lacey\\_act/index.shtml](http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml)
  - The Federal Register Notice regarding implementation of revised Lacey Act provisions;
  - Implementation questions and answers; and
  - A powerpoint presentation on amendments to the Lacey Act Farm Bill 2008

\* Information available as of 10.16.08