

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Eighteenth meeting of the Plants Committee
Buenos Aires (Argentina), 17-21 March 2009

AMENDMENTS TO THE UNITED STATES LACEY ACT

1. This document has been submitted by the United States of America*.

Background

2. The Lacey Act was first enacted in 1900 to combat the impact on U.S. wildlife resources of hunting to supply commercial markets, interstate shipment of unlawfully killed game, introduction of harmful exotic species, and killing of birds for feather trade. It is the oldest U.S. wildlife protection statute and is intended as a tool to combat illegal trafficking in wildlife, fish and plants.

2008 Amendments to the Lacey Act

3. In May 2008, the Lacey Act was amended to extend the statute's reach to include a broader range of plants and plant products, including timber derived from illegally harvested trees. The Lacey Act makes it illegal to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce, any plant or products made from plants, with limited exceptions, taken or traded in violation of domestic or foreign laws.
4. The revised Lacey Act provides the legal authority to take action when products derived from illegally harvested plants enter the United States.
5. Under the Lacey Act, the term 'plant' is defined as any wild member of the plant kingdom, including roots, seeds, parts or product thereof, and trees from either natural or planted forest stands. However, the following specimens are excluded from coverage under the Lacey Act:
 - Common cultivars¹ (except trees);
 - Common food crops **Error! Bookmark not defined.**;
 - Scientific specimens for research; and
 - Plants to remain planted or be replanted.

* *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

¹ *These terms will be defined in a regulation to be issued in 2009.*

6. The exclusion of scientific specimens and live plants from the Lacey Act does not apply if the plant is listed:
 - In an Appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
 - As an endangered or threatened species under the Endangered Species Act of 1973; or
 - Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Declaration requirement and phased-in enforcement

7. The Act requires an import declaration for plants and plant products that includes the scientific name of the plant(s), the value of the plant or plant product, quantity, and the name of the country where the plant(s) originated. If a plant species cannot be determined, the plant declaration must include a list of possible plant species found in the product. If a country of origin cannot be determined, the plant declaration must include a list of possible countries from which the plant originated.
8. Although the declaration requirement of the Lacey Act became effective on December 15, 2008, enforcement of the requirement will be phased-in and will begin on April 1, 2009 (unless the implementation date must be delayed slightly for technical reasons as described below). Phase I includes domestic and international public outreach and runs through March 2009. Although declarations can be submitted during this phase, no enforcement action will be taken if they are not submitted. Phase II, which begins the actual enforcement of the requirement for importers to submit declarations, will run from April 1, 2009 through September 30, 2009, and will include certain commodities in Chapter 44 (wood and articles of wood) of the Harmonized Tariff Schedule (HTS). Specifically, Phase II will cover the following HTS codes: 4401 – (Fuel wood), 4403 – (Wood in the rough), 4404 – (Hoopwood, poles, piles, stakes), 4406 – (Railway or tramway sleepers), 4407 – (Wood sawn or chipped lengthwise), 4408 – (Sheets for veneering), 4409 – (Wood continuously shaped), 4417 – (Tools, tool handles, broom handles), and 4418 – (Builders' joinery and carpentry of wood). The United States is currently seeking public comments on the commodities to be included in Phases III and IV, which run from October 1, 2009 through from March 31, 2010, and April 1, 2010 through September 30, 2010, respectively.
9. The Department of Homeland Security's Bureau of Customs and Border Protection (CBP) already collects some of the information that the Lacey Act amendments require importers to include in their declarations. CBP is currently modifying its Automated Commercial System (ACS) to collect the remaining data required on the declaration, and the United States intends to begin enforcement of the declaration requirement upon completion of those modifications. Currently, CBP anticipates completing the changes to the system by April 1, 2009, and Phase II remains scheduled to begin on April 1, 2009. If there are any changes to that date, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) will notify the public.
10. More information on the Lacey Act, including information on any changes to the phased-in enforcement schedule, is available on the website of the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) at http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml.